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A

# GUIDE TO OFFICERS OF TOWNS;

CONTAINING THE

STATUTES RELATING TO THEIR OFFICIAL DUTIES,

WITH

Forms, Directions and Legal Decisions,

ADAPTED TO THE

REVISED STATUTES OF NEW-HAMPSHIRE.

BY CHARLES J. FOX.

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## P R E F A C E .

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THE changes which have taken place within the last twelve years in the statute laws of the state have been very great, but perhaps in no respect have these changes been greater than in the laws concerning the powers and duties of town officers. These powers and duties are extensive and complicated, perplexing to the man of business, and not always easily understood by the professed lawyer. The "Town Officer" of chief justice Richardson was a convenient and useful manual, and has rendered essential service to the state, by means of forms contained in it, ensuring correctness and preventing litigation. But the changes of the laws have now rendered a large proportion of these forms incorrect, and a new manual has become necessary.

The compiler has adopted the plan of dividing the book into titles, chapters and sections, and of placing an abstract of the contents of each chapter at its head. A great variety of forms have been prepared, sufficient probably for all practical purposes. To have provided a form adapted to every case would have swelled the book to no good purpose. It was thought that references to those cases in which questions of law relating to the subjects contained in this book had been decided might be useful, and numerous extracts have been made accordingly, not only from the New-Hampshire Reports, but from those of Massachusetts, Maine and Vermont, when applicable.

The Revised Statutes are referred to by chapters and sections, thus: *R. S.*, *ch.* , *sec.* . The word *Ibid.* refers to the next reference preceding. If the reference is to

a chapter or section, and no more, it means that chapter of this book, or that section of the same chapter. The New-Hampshire Reports are referred to by the volume and page; as, for instance, 1 *N. H. R.*, 38—meaning volume 1, page 38. *Mass. R.*, *Pick. R.*, and *Metcalf R.* refer to the Massachusetts, Pickering's and Metcalf's Reports; these are all decisions by courts in Massachusetts. *Maine R.*, *Greenleaf R.*, *Fairfield R.* and *Shepley R.*, refer to Maine, Greenleaf's, Fairfield's and Shepley's Reports; these are all decisions by courts in Maine. *Vermont R.*, refers to the Vermont Reports.

The work is adapted to the Revised Statutes, and contains all the more important provisions relating to the duties of town officers. It is not intended, however, to supersede the necessity of the Revised Statutes for town officers, for every such officer should own a copy of the laws under which he lives and acts. As they have not yet been published, or any decisions under them been made, the compiler may in some instances have given them a wrong construction, or some of the references may not now apply. He has endeavored, however, to avoid this, and to err, if at all, on the safe side, by advising, in cases of doubt, the officer to take that course which seemed safest; to require him to do more than was necessary, rather than to do less.

The object of the compiler has been merely to furnish a GUIDE to point out to the inexperienced officer his general pathway. He must not expect that it will explain every difficulty and answer every question. General rules only can be given, and their application must be left to the good sense of the officer. If the work is accurate, clear and methodical, it will fully repay the care and labor of

THE COMPILER.

Nashville, March 13, 1843.

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# TITLE I.

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## OF TOWNS AND TOWN OFFICERS.

- CHAPTER 1. Of the powers and duties of towns.  
CHAPTER 2. Of warning town meetings.  
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CHAPTER 4. Of the choice and duties of town officers, and of filling vacancies.  
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## CHAPTER 1.

### OF THE POWERS AND DUTIES OF TOWNS.

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1. The inhabitants of every town in this state are a body corporate and politic, and by their corporate name may sue and be sued, prosecute and defend, in any court or elsewhere. *R. S., chap. 31, sec. 1.*

2. All places incorporated by the name of parishes, with

town privileges, are declared to be towns, and entitled to the privileges, vested with all the powers, and subject to all the liabilities of towns. *R. S., chap. 31, sec. 2.*

3. Towns may purchase and hold real and personal estate for the public uses of the inhabitants, and may sell and convey the same, and may make any contracts which may be necessary and convenient for the transaction of the public business of the town. *R. S., chap. 31, sec. 3.*

4. Towns may at any legal meeting, grant and vote such sums of money as they shall judge necessary, for the support of schools, for school-houses, for the maintenance of the poor, for laying out and repairing highways, for building and repairing bridges, for the repair of meeting-houses owned by the town, so far as to render them useful for town purposes, and for all the necessary charges arising within the town. *R. S., chap. 31, sec. 4.*

5. Towns may vote such sums of money as may be necessary to fulfill any existing contract made between the town and any settled minister before the first day of July, 1819: provided, no person shall be taxed for the purpose of fulfilling such contract who shall have filed with the town-clerk, before the assessment of such tax, a certificate, declaring himself not to be of the religious persuasion or opinion of such minister. *R. S., ch. 31, sec. 6.*

6. Every town may make rules and by-laws for managing and ordering the prudential affairs of such town, and may annex penalties thereto, not exceeding four dollars for one offence, and enuring to such uses as they may direct. *R. S., ch. 31, sec. 5.*

7. Any town may make by-laws to prevent horses, mules, asses, neat cattle, sheep and swine, from going at large in any street, highway or common, or in any public place in the town, at any time of the year therein prescribed, on penalty that the owner shall forfeit a sum not exceeding four dollars for any breach thereof. *R. S., ch. 31, sec. 7.*

8. By-laws adopted by any town shall continue in force until altered or annulled by the vote of the town, or by law. *R. S., ch. 31, sec. 8.*

9. The subject matter of all business to be acted upon in any town meeting, shall be distinctly stated in the warrant therefor; and nothing done at any meeting shall be valid unless the subject thereof was so stated. *R. S., ch. 32, sec. 2.*

10. All places unincorporated, which shall be required to pay any public tax, are invested with the powers of towns relating to the choice of moderator and clerk, of selectmen, assessors and collectors; and all the provisions of the laws applicable to towns and town officers are extended to such unincorporated places and their officers, so far as they relate to meetings for the choice of such officers, and to their election, powers, duties and liabilities; and so far as they relate to public highways, the assessment and collection of public taxes, and the perambulation of the lines of such places. *R. S. chap. 38, sec. 1.*

11. The legislature may enlarge or curtail the powers of towns, or divide their territory and make new towns, whenever the convenience of the public requires it. *3 N. H. Reports, 532.*

12. Upon such division the property and burdens may be apportioned between the towns as equity demands. *8 N. H. R. 320; 3 N. H. R. 532.*

13. Upon such division the old corporation retains all the property, rights and privileges, and remains subject to all its obligations and duties, unless some new provision is made by the act authorizing the separation. *4 Mass. Rep. 384, 539; 2 N. H. R. 21; 8 ditto 320.*

14. Towns cannot pass the title to real estate owned by the town, by a vote merely; the conveyance should be by an agent or agents, duly appointed by the town at some meeting for that purpose. *5 N. H. R. 461.*

15. Towns derive all their powers to raise money by taxation, from the statute; a vote to raise money for a purpose not authorized by statute, is illegal and void. *3 N. H. R. 498; 14 Maine Rep. 375.*

16. Towns may release a debt as well as contract one, by a vote of the majority; *8 Greenl. R. 334; 3 N. H. R. 499;* and the town, or the selectmen thereof, may remit any penalty or forfeiture belonging to such town. *R. S. ch. 212, sec. 6.*

17. The legislature has not a constitutional right to impose a tax on the lands in a particular town or unincorporated place, for any purpose; the law should extend to all towns and places. *4 N. H. R. 572.*

18. An article in the warrant for town meeting, "To see what sum of money the town will vote to raise for the support of schools, of the poor, repairing bridges and high-

ways, for the payment of the just debts of the town, and for other legal purposes," states with sufficient precision the subject matter to be acted on under it. 7 *N. H. R.* 113.

19. When a petition to be presented to the legislature affects the rights of any town, a copy of it should be given to the town clerk and one selectman, thirty days at least before the annual meeting in March. *R. S. ch. 2, sec. 2.* But this is merely directory, as the legislature may waive it if they see fit.

20. It is not necessary that towns, in their votes raising money for the annual expenditures authorized by law, should in all cases raise a specific sum for each object. A vote to raise a certain sum "for the expenditures of the current year, being the subject matter of the eighth article in the warrant, excepting for highways and bridges," is a legal vote. 7 *N. H. R.* 114.

21. It is the more prudent course, however, to raise a specific sum for each particular object, and to make the record accordingly.

22. What may be considered "*the necessary charges arising within the town*," is somewhat difficult to determine. If a power, however, is given to, or a duty imposed upon a town by law, the means required to execute the power, or fulfill the duty, would be "necessary charges." These include the usual town expenses, payments to soldiers, expenses of hospitals, and vaccination to prevent the spread of the small pox, the erection and maintenance of guide-boards, the cost of actions by and against the town, the erection of a town house, poor house and house of correction, the expense of providing pounds, standard weights and measures and record books, and all expenditures for objects authorized by any statute, or necessary to carry the object of such statute into effect.

"The authority of a town to raise money by taxation, is limited to a very few objects." 4 *N. H. R.* 500. These objects are defined by statute, or arise necessarily therefrom; otherwise the tax is illegal. Thus a vote to pay a toll-bridge company \$400 per annum for the right of all the inhabitants of the town to pass the bridge free of toll, however advantageous, was held in Maine to be illegal. 3 *Greenleaf R.* 191. So a vote to repair a meeting-house "for *religious and town use*," is illegal—8 *Greenleaf R.* 400; or to build a house to rent—*ibid*; or to build a jail—10 *Vt. Rep.* 506;

*see, also, chap. 26*; or a place of amusement, or a monument. 13 *Mass.* 279.

23. The other powers and duties of towns will be found under their appropriate titles, or under the title of the officer who is to attend to the execution of the law.

24. A town has no power to rescind a contract once legally made, any more than an individual has. 7 *N. H. R.* 255.

25. Each town is entitled to a copy of the Revised Statutes and Laws of each session—*R. S. ch. 3, sec. 3*; the Journals of the House and Senate—*R. S. ch. 3, sec. 8*; the Laws of the United States—*R. S. ch. 3, sec. 5*; and the New-Hampshire Reports—*R. S. ch. 11, sec. 5*.

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## CHAPTER 2.

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1. The annual meeting of every town shall be holden on the second Tuesday, or other day, in March annually, for the choice of town officers, and the transaction of other town business. *R. S. ch. 32, sec. 1.*



2. A town meeting may be warned by the selectmen, when in their opinion there shall be occasion therefor. *R. S. ch. 32, sec. 1.*

3. The warrant for every town meeting shall be under the hands and seal of the selectmen, and shall prescribe the place, day and hour of the meeting. *R. S. ch. 32, sec. 2.*

4. The subject matter of all business to be there acted upon shall be distinctly stated in the warrant, and nothing done at any meeting shall be valid unless the subject thereof was so stated. *R. S. ch. 32, sec. 2.*

5. The selectmen, upon the written application of ten or more voters, or of one sixth part of the voters in the town, shall insert in their warrant for the annual, or any other meeting, any subject specified in such application, or shall warn a meeting therefor, if requested in such application. *R. S. ch. 32, sec. 3.*

6. The selectmen may address their warrant to the inhabitants of the town qualified to vote in town affairs, in which case they shall post up an attested copy of such warrant at the place of meeting, and a like copy at one other public place in the town, fifteen days before the day of meeting. *R. S. ch. 32, sec. 4.*

7. Warrants for town meeting may be directed to a constable of such town, requiring him to notify the inhabitants; and such constable shall post up an attested copy of such warrant, as provided in the preceding section. *R. S. ch. 32, sec. 5.*

8. Any town may by vote prescribe a different method of warning meetings, and the meetings warned in pursuance of such vote shall be legal and valid. *R. S. ch. 32, sec. 6.*

9. The selectmen or the constable serving any warrant, shall return the same at the time and place of meeting, with a certificate of the service thereof, to the town-clerk, or, in his absence, to one of the selectmen. *R. S. ch. 32, sec. 7.*

10. In case of the death or removal of any of the selectmen of a town, the major part of those who remain in office shall have power to warn meetings. *R. S. ch. 32, sec. 8.*

11. If the selectmen shall unreasonably neglect or refuse to warn a meeting, or to insert any article in their warrant, a justice of the peace, upon application in writing of one

sixth part of the voters of such town, may issue a warrant for such meeting. *R. S. ch. 32, sec. 9.*

12. If the annual meeting in any town shall not have been holden, or if there has never been any legal meeting of such town, a justice of the peace, on application of ten voters, or of one sixth part of the voters of the town, may issue a warrant for such meeting. *R. S. ch. 32, sec. 10.*

13. The warrant of a justice of the peace for a town meeting shall be under his hand and seal, directed to a constable of the town, if any there be; otherwise to one of the voters applying; shall specify the time, place and objects of the meeting, and shall be served and returned in the same manner as warrants issued by selectmen. *R. S. ch. 32, sec. 11.*

14. If any selectmen shall neglect to issue a warrant for the holding of meetings for the choice of state, county or town officers, electors of president and vice president of the United States, or representatives in congress, or shall neglect to cause copies of such warrant, if not directed to a constable, to be duly posted up, or notice of such meeting to be given agreeably to any vote of the town, they shall, for each offence, forfeit the sum of fifty dollars, one half to the use of the town, the other half to the use of the person who may sue for the same. *R. S. ch. 32, sec. 12.*

15. Every application for a town meeting must be in writing, and signed by at least ten legal voters of the town, if there are sixty voters or more in the town; otherwise, by one sixth part of the legal voters of the town.

16. The selectmen may call a town meeting when they think proper, without any application, but they shall call one upon application as aforesaid. If there has never been any meeting of the town, or if the annual meeting has failed to be holden, the warrant must be issued by a justice. If the selectmen unreasonably neglect or refuse, any justice, on written application, may issue his warrant for a meeting.

17. The return of the constable, or selectmen who post up the warrant, must state the day on which it was posted up, and the places where it was so posted, one of which places must appear to be the place of meeting, and the other a public place. The following returns are wrong: "B., March 11, 1828. These certify that the within warrant has been posted up for more than fifteen days. S. W., J. W., Selectmen." 6 *N. H. R.* 195. "March 12, 1822.

Lawfully posted a true copy of the within articles." 6 *N. H. R.* 184.

18. "The posting of the original warrant, instead of a copy, is a valid notice of a town meeting." 7 *N. H. R.* 284.

19. The form of a warrant for calling a town meeting, when directed to a constable, may be as follows :

### STATE OF NEW-HAMPSHIRE.



*To D. W. one of the constables of the town of Nashua, in the county of Hillsborough,*  
GREETING.

In the name of the state of New-Hampshire you are directed to notify the inhabitants of said town of Nashua, qualified by law to vote in town affairs, to meet at Rev. Mr. R's meeting house in said town, on Tuesday, the fourteenth day of March next, at nine of the clock in the forenoon, then and there to act on the following subjects :

1. To choose a moderator, to preside in said meeting.
2. To choose all necessary town officers for the year ensuing.

3. To bring in their votes for governor, counsellor, senator, county treasurer, register of deeds and three road commissioners.

4. To determine the number of representatives said town will choose the present year.

5. To choose one or more representatives to represent said town in the general court, to be held at Concord, on the first Wednesday of June next.

6. To raise such sums of money as may be necessary to defray town charges for the ensuing year, and make appropriation of the same.

7. To see if the town will adopt the provisions of chapters 113 and 114 of the Revised Statutes, or any part thereof.

8. To see if the town will vote to discontinue the highway leading from \_\_\_\_\_ to \_\_\_\_\_.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the town-clerk, or in his absence to one of the selectmen, at the time and place of meeting as aforesaid.

Given under our hands and seal, this twenty-seventh day



of February, in the year one thousand eight hundred and forty-three.

A. B. }  
C. D. } *Selectmen of Nashua.*  
E. F. }

20. The form of the constable's return of service on the back of any warrant for town meeting by him served may be as follows :

*Nashua, March 14, 1843.* Pursuant to the within warrant I have notified said inhabitants to meet at the time and place, and for the purposes within mentioned, by posting up an attested copy of such warrant at the place of meeting within specified, and also a like attested copy at the tavern of W. W. P., being a public place in said town, on the twenty-eighth day of February last, being fifteen days before said meeting.

D. W., *Constable of Nashua.*

21. When the warrant is posted up by the selectmen, the form may be as follows :

#### STATE OF NEW-HAMPSHIRE.



*To the inhabitants of the town of N., in the county of H., in said state, qualified to vote in town affairs.*

You are hereby notified to meet at the Baptist meeting-house in said N., on Tuesday, the fourteenth day of March next, at nine of the clock in the forenoon, to act upon the following subjects :

1. To choose a moderator, to preside in said meeting.
2. To choose all necessary town officers for the year ensuing.
3. To bring in your votes for governor, counsellor, senator, county treasurer, register of deeds and three road commissioners.
4. To determine, &c. &c.

Given under our hands and seal, this twenty-seventh day of February, in the year eighteen hundred and forty-three.

A. B. }  
C. D. } *Selectmen of N.*  
E. F. }

22. The return of the selectmen may be as follows:

N—, *March 14, 1843.* We hereby certify that we gave notice to the inhabitants within named, to meet at the time and place, and for the purposes within mentioned, by posting up an attested copy of the within warrant at the place of meeting within named, and a like attested copy at the tavern of W. M., being a public place in said town, on the twenty-seventh day of February, 1843.

A. B. }  
C. D. } *Selectmen of N.*  
E. F. }

23. The application to the selectmen to call a town meeting, may be as follows:

*To the Selectmen of the town of Merrimac.*

You are requested by the subscribers, legal voters of said town, to call a meeting of the inhabitants of said town, and to insert in the warrant for the same an article in substance as follows, viz. To see if the town will vote to set off the homestead farm of A. B. from school district No. 1, and annex the same to school district No. 2.

A. B., C. D., E. F., &c.

*Merrimac, Sept. 10, 1842.*

24. The form of the application to a justice, when the selectmen neglect or refuse to call a meeting, or insert an article as aforesaid, may be thus:

*To P. C., Esquire, one of the Justices of the Peace for the county of Hillsborough.*

The subscribers, being one sixth part of the legal voters in the town of Merrimac, in said county, respectfully shew that on the tenth day of September last, sundry voters of said town made written application to the selectmen thereof, a copy of which is as follows:

*(Here insert a copy of the application, names of signers, &c.)*

Yet the said selectmen have unreasonably neglected to comply with said request: Wherefore the subscribers request you to issue a warrant to call a meeting of the inhabitants of said town, to act upon the article contained in said application.

A. B., C. D., &c.

25. The warrant issued by the justice upon such application must be under seal, and may be as follows :

### STATE OF NEW-HAMPSHIRE.



*To S. M., one of the Constables of the town of Merrimac, in the county of Hillsborough,*  
GREETING.

Whereas application has been made to me, one of the justices of the peace for said county, by one sixth part of the legal voters in said town, to call a meeting of the inhabitants of said town, to act upon the article hereinafter mentioned ; and whereas it has been made to appear to me that the selectmen of said town, upon application in writing duly made to them for the purpose, have unreasonably neglected to insert said article in the warrant for a town meeting issued next after said application to them :

In the name of said state you are required to warn the inhabitants of said town qualified to vote in town affairs, to meet at the congregational meeting-house in said town, on the twenty-seventh day of September next, at nine of the clock in the forenoon, to act upon the following subjects :

1. To choose a moderator, to preside in said meeting.
2. To see if the town will vote to set off the homestead farm of A. B. from school district No. 1, and annex the same to school district No. 2.

Fail not to make due service of this warrant, and to make return thereof, with your doings thereon, to the clerk of said town, or, in his absence, to one of the selectmen, at the time and place of meeting aforesaid.

Given under my hand and seal, this      day of      , A. D. 1843.  
P. C., *Justice of the Peace.*

26. If in such case the selectmen have unreasonably neglected to call a meeting, omit the words, "have unreasonably neglected to insert said article in the warrant for a town meeting issued next after said application to them," and insert instead—have unreasonably neglected to call a meeting, to act upon said article.

27. If the annual meeting in any town shall not have been holden, the form of an application to a justice may be thus :

*To P. C., Esquire, a Justice of the Peace for the county of Hillsborough.*

The subscribers, legal voters of the town of N., in said county, represent that the annual meeting of the inhabitants of said town, required by law to be holden in March annually, has not been holden, and that it is necessary that such meeting should be holden, and town officers duly chosen, and other business transacted by said town. You are therefore requested to issue a warrant to call a meeting of the inhabitants of said town, to act upon the following subjects :

1. To choose a moderator to preside in said meeting.
2. To choose all necessary town officers.
3. To, &c. T. R., G. H., &c. &c.

28. The warrant issued by the justice on such application must be under seal, and may be as follows :

#### STATE OF NEW-HAMPSHIRE.



*To S. M., one of the Constables of the town of N., in the county of Hillsborough,*

GREETING.

Whereas application has been made to me, one of the justices of the peace for said county, by ten legal voters in said town, to call a meeting of the inhabitants of said town qualified to vote in town affairs, to act upon the articles hereinafter mentioned ; and whereas it appears to me that the annual meeting of said town has not been holden according to law :

In the name of said state you are required, &c. &c. (*The remainder of the Warrant may be the same as in section 25.*) If there is no constable, it should be directed to one of the voters applying.

## CHAPTER 3.

### OF THE GOVERNMENT AND POWERS OF TOWN MEETINGS.

- |   |   |
|---|---|
| 1. Who presides till moderator chosen.<br>2. When justice presides.<br>3. Choice and powers of moderator.<br>4. Vote made certain by a poll.<br>5. Disorderly speaking, penalty.<br>6. Disorderly conduct, penalty. | 7. Constable to enforce order.<br>8. Disorderly conduct indictable.<br>9. Power to adjourn or dissolve.<br>10. Effect of illegal votes.<br>11. Who are legal voters.<br>12. Liability of moderator. |
|---|---|

1. At every town meeting the selectman present who is senior in rank shall preside until a moderator is chosen, and shall have the powers and perform the duties of moderator. If no selectman is present the town-clerk shall preside. *R. S. ch. 33, sec. 1.*

2. When there are no selectmen or town-clerk of the town, it shall be the duty of the justice calling such meeting to attend and preside until a moderator is chosen. *R. S. ch. 33, sec. 2.*

3. At every town meeting a moderator shall be first chosen by ballot, by a majority of votes, who shall be sworn, and shall preside in and regulate the business of the meeting; may prescribe rules of proceeding therein, which may be altered by the town; shall decide all questions of order, and make a public declaration of all the votes passed. *R. S. ch. 33, sec. 3.*

4. When any vote declared by the moderator shall immediately, and before any other business is commenced, be questioned by seven or more of the voters present, the moderator shall make the vote certain by a poll of the voters. *R. S. ch. 33, sec. 4.* By "a poll of the voters" is understood any mode of counting the *polls*, or heads, which can render the count certain.

5. No person shall speak in any meeting without leave of the moderator, nor when any person is orderly speaking; and all persons shall be silent at the desire of the modera-



tor, on pain of forfeiting one dollar for each offence, for the use of the town. *R. S. ch. 33, sec. 5.*

6. If any person shall conduct in a disorderly manner, and, after notice from the moderator, shall persist therein; or shall in any way disturb the meeting, or willfully violate any rule of proceeding therein, the moderator may command any constable, or any legal voter of such town, to carry such disorderly person out of the meeting, and detain him until the business of the meeting is finished. *R. S. ch. 33, sec. 6.*

7. Every constable shall obey the orders and commands of the moderator for the preservation of order, and may command such assistance as is necessary; and if any constable shall neglect to perform any of the duties required by this or the preceding chapter, he shall forfeit the sum of forty dollars, one half for the use of the town, the other half to any person who will sue for the same. *R. S. ch. 33, sec. 7.*

8. Disorderly behavior in town meetings is a misdemeanor at common law, and punishable by indictment. *16 Mass. R. 385.*

9. Any town meeting, after it is organized, may be adjourned from time to time, and to such place within the same town, or may be dissolved, as a majority of the voters present shall determine. *13 Maine R. 466.*

10. If persons should vote who were not legally authorized, without being challenged, it would not vitiate the proceedings. *3 Pick. R. 232.*

11. The rights and qualifications of voters are the same as in other elections. *See ch. 9.*

12. A moderator will not be liable to an action for refusing to receive the vote of a person who is a legal voter, without proof of malice express or implied. *1 N. H. R. 88.*

## CHAPTER 4.

### OF THE CHOICE AND DUTIES OF TOWN OFFICERS, AND OF FILLING VACANCIES.

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Town clerk, choice and duties.</li> <li>2. Selectmen, " " "</li> <li>3. Assessors, " " "</li> <li>4. Agents, overseers of poor, &amp;c.</li> <li>5. Constables, and other officers.</li> <li>6. Duration of office.</li> <li>7. Choice, how made.</li> <li>8. Vacancy filled by town.</li> <li>9. Powers of such officers.</li> <li>10. Collector appointed by selectmen.</li> <li>11. Collector and constable to give bond.</li> <li>12. Compensation of collector.</li> <li>13. Collector may appoint deputies.</li> <li>14. Vacancy in any town office filled by selectmen.</li> <li>15. Treasurer appointed by selectmen.</li> <li>16. When officer "becomes insane."</li> <li>17. Form of appointment.</li> <li>18. Form of bond to town.</li> <li>19. Requisites of bonds.</li> <li>20. Form of agreement with collector or treasurer.</li> </ol> | <ol style="list-style-type: none"> <li>21. General form of records.</li> <li>22. Records may be amended.</li> <li>23. Town-clerk cannot make a record of proceedings before his election.</li> <li>24. Parol testimony not admissible to supply record.</li> <li>25. Penalty on town-clerk for making false record or copy.</li> <li>26. Penalty for not giving copy.</li> <li>27. Fees of town-clerk.</li> <li>28. Authority, how executed by agents.</li> <li>29. When majority may act.</li> <li>30. Responsibility of selectmen and officers acting under them.</li> <li>31. "Selectmen," in statute meaning of.</li> <li>32. Construction of titles.</li> <li>33. Selectmen are agents of town.</li> <li>34. Powers of special agents.</li> <li>35. Collectorship, not to be sold.</li> <li>36. No person compelled to serve two years, nor as constable.</li> <li>37. Form of record of elections.</li> <li>38. Other powers and duties.</li> </ol> |
|---|---|

1. Every town at the annual meeting shall choose, by ballot and by major vote, a town-clerk, whose duty it shall be to record all votes passed by the town while he may remain in office, and to discharge all the duties of the office according to law. *R. S. ch. 34, sec. 1.*

2. At such meeting three or more selectmen, not exceeding nine, shall be chosen, by ballot and by major vote, who shall manage all the prudential affairs of the town, and shall perform all the duties by law prescribed. A majority of the selectmen shall be competent to act in all cases.

3. Any town may choose assessors, by ballot and by major vote, who shall constitute, with the selectmen, a joint board

for the assessment of taxes; and all questions arising at such board shall be decided by a major vote of the joint members thereof. *R. S. chap. 34, sec. 3.*

4. Any town may choose, by major vote, one or more agents, overseers of the poor, a treasurer, firewards and health officers. If such officers are not chosen, the selectmen shall discharge the duties and have the powers of that office. *R. S. chap. 34, sec. 4.*

5. Every town may choose, by major vote, one or more constables; one or more collectors of taxes; surveyors of highways; fence-viewers; a clerk of the market; sealers of weights and measures; hog-reeves; a pound keeper; measurers of wood; surveyors of lumber; cullers of staves, and every other officer who may be directed by law to be chosen, and such other officers as they may judge necessary for managing their affairs, who shall severally perform the duties prescribed by law. *R. S. ch. 34, sec. 5.* The other town officers which may be chosen, are superintending school committee, (who are to be chosen *by ballot*;) auditors, police officers, watchmen, agents for vaccination, &c.

6. All town officers shall continue in office until the next annual meeting for the choice of town officers, and until others shall be chosen and sworn in their stead, except in cases where the law shall otherwise direct. *R. S. chap. 34, sec. 6.*

7. Every choice must be made by a majority of the legal voters who vote; but no election need be by ballot, except where expressly required. If the choice is by ballot the record should so state.

8. When any person, elected to any town office, shall not accept the same, or shall die, resign, remove from town, or become insane in the judgment of the town, or when no annual meeting shall have been holden for the choice of town officers, or no choice has been made, or when there shall be a vacancy in any other way, the town may choose such officer at any legal meeting holden for that purpose, or at the adjournment of the annual meeting. *R. S. chap. 36, sec. 1.*

9. The powers, duties and liabilities of every officer so chosen shall be the same as if he were chosen at the annual meeting; and he may take up the business appertaining to his office where his immediate predecessor left it, and proceed to the full execution of the same. *R. S. chap. 36, sec. 2.*



10. When any town shall neglect or refuse to choose a collector of taxes, or to fill a vacancy in that office, or where any town shall by vote at their annual meeting so direct, the selectmen may appoint a collector or collectors of taxes, whose powers, duties and liabilities shall be the same as those of collectors chosen by the town. *R. S. chap. 36, sec. 3.* The sale of the office of collector is illegal, even if the same person is afterward *elected.* 7 *N. H. R.* 114.

11. Every collector or constable shall, within six days after his election or appointment, give a bond, with sufficient sureties, to the acceptance of the town or of the selectmen, for the faithful performance of the duties of his office, and in default thereof the office shall become vacant. *R. S. chap. 36, sec. 4.*

12. Every town may, at their annual meeting, determine, by vote or otherwise, the rate or amount of compensation to be allowed the collector of taxes for his services; and whenever the selectmen shall appoint a collector, they shall make a written agreement as to such compensation, which shall be signed by the selectmen and collector. *R. S. chap. 36, sec. 5.*

13. Any collector, being authorized by vote of the town, may appoint deputies, who shall be sworn, shall give bond to the satisfaction of the selectmen, and shall have the powers of collectors, and may be removed at the pleasure of the collector. *R. S. chap. 45, sec. 19.*

14. Whenever a vacancy shall occur in any town office, other than that of selectman, the selectmen may, in writing, appoint some suitable person to the office, who shall be sworn; and his appointment and a certificate of such oath being recorded in the records of the town, he shall have the powers, perform the duties, and be subject to the liabilities of such officer until another person shall be chosen and qualified; and it shall be the duty of the selectmen without delay so to appoint a town-clerk, whenever a vacancy shall occur in that office. *R. S. chap. 36, sec. 6.*

16. The selectmen, being authorized by vote of the town, shall appoint a treasurer within fourteen days after their election, and fix his compensation by a written contract. Such treasurer shall be sworn, shall give bonds for the faithful discharge of his duties, to the satisfaction of the selectmen, and shall hold his office during their pleasure. *R. S. chap. 36, sec. 7.*

16. When an officer shall "become insane in the judgment of the town," a vote to that effect should be passed, declaring the office vacant for that reason. The form may be thus :

*Voted*, that A. B. has become insane in the judgment of this town, and that the office of constable held by him be considered vacant.

17. The appointment of an officer by the selectmen may be in form following :

*To S. M., of Amherst, in the county of Hillsborough.*

Whereas there is a vacancy in the office of constable in said town, and whereas we the subscribers have confidence in your ability and integrity to perform the duties of said office, we do hereby appoint you, the said S. M., a constable of said town ; and upon your taking the oath of office and having this appointment and the certificate of said oath of office recorded by the town-clerk, you shall have the powers, perform the duties, and be subject to the liabilities of such office, until another person shall be chosen and qualified in your stead.

Given under our hands this fifteenth day of March, 1843.  
C. F. G., A. M., T. P., *Selectmen of A.*

18. The form of a bond to be given by an officer may be thus :

Know all men by these presents, that we, A. B., of M., in the county of \_\_\_\_\_, as principal, and C. D. and E. F., of said M., as sureties, are held and firmly bound unto the said town of M., in the sum of \_\_\_\_\_ dollars ; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, by these presents. Witness our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

The condition of this obligation is such, that whereas the said A. B. has been chosen a \_\_\_\_\_ for said town for the year 1843 : Now if the said A. B. shall well and faithfully perform all the duties of his said office, then this obligation to be void ; otherwise to remain in full force.

Signed, sealed and delivered,  
in presence of us.

A. B. (*seal.*)  
C. D. (*seal.*)  
E. F. (*seal.*)

19. All bonds given by town officers should be in a sum sufficient to cover all possible liabilities; should be signed by two or more sureties, to be approved by the town or by the selectmen, and be filed with the town-clerk. If the bond is approved by the town, the town-clerk may make a record thereof, thus :

*Voted*, that the bond filed this day by A. B., constable, be approved by the town.

If approved by the selectmen, the approval may be written on the back of the bond, as follows :

N                   , *March 16, 1843.* This certifies that we are acquainted with G. D. and P. T., the sureties named in the within bond, and believe that they are able and sufficient to respond the penalty thereof :

C. F. G., A. M., C. F. P., *Selectmen.*

20. The agreement between the selectmen and a collector or treasurer, may be in form as follows :

Whereas N. D., of H., in the county of M., has been appointed (*or chosen*, if the fact is so,) a                    of said town for the year                    : Now it is hereby agreed between G. D., P. L. and M. G., selectmen of said town, in behalf of said town, on the one part, and the said N. D. on the other part, that the said N. D. shall receive of said town for his services in said office the following compensation :

Witness our hands this                    day of                    18   .  
G. D., P. L., M. G., N. D.

21. Every record made by the town-clerk is made by him under the sanction of an oath. It should state all proceedings fully and truly, and should in all cases be signed by him and attested thus : "A true record. Attest : A. B., town-clerk of N." If a paper is copied into the record book it should be done carefully, and attested thus : "A true copy of the original. Attest :

A. B., *Town-Clerk of N.*"

22. If the proceedings were correct, but there is a mistake in making the record, the town-clerk will in some cases be allowed to correct his record so as to set it right. This may be done by order of court, when it is to be used as evidence in a suit in court, upon evidence of the truth of the amendment, or by order of the legislature. Such

amendment must be made by the person who was in office when the proceedings were had; but it is not necessary that he should hold the office at the time of making the amendment. The proper form of making such amendment is to draw out the amendment, and annex it, with the order of court allowing it, to the original record. No alteration or erasure of the original record should be made. 9 *N. H. R.* 168; *R. S. chap. 30, sec. 4.*

23. A person claiming to be town-clerk, and alleged to have been elected on the 2d of March, cannot make a record of an adjournment of a former meeting to that day. 2 *Pick. Rep.* 397.

24. Parol testimony that such former meeting was adjourned to the 2d of March, is not admissible; provable only by record. 2 *Pick. Rep.* 397.

25. If any town-clerk shall make any false record, or a false copy of a record, he may be punished therefor by confinement to hard labor in the state prison not less than two nor more than five years. *R. S. ch. 217, sec. 18.*

26. If any town-clerk shall refuse to give a copy of any record or paper filed in his office, he is liable to a penalty of thirty dollars.

27. The fees of town-clerks are as follows:

For every page of a copy, estimating 224 words as a page, 12½ cents;

For every part less than a page, 8 cents;

For a certificate on a copy, 10 cents;

For recording mortgages and contracts, the same fees as for a copy;

For every certificate thereon, 4 cents;

For discharging a mortgage, 17 cents;

For examining records, 20 cents an hour. *R. S. ch. 229, sec. 4, 18, 19.* If he takes greater fees he is liable to a fine of forty dollars. *R. S. ch. 229, sec. 27.*

28. When an authority is given by law to three or more persons, it may in general be executed by a majority of them; if the authority is given by individuals, or a corporation, in order to bind the principal all must act. 7 *N. H. R.* 253.

29. All words (used in a statute) purporting to give a joint authority to three or more public officers, shall be construed as giving such authority to a majority of them, unless otherwise expressly declared. *R. S. ch. 1, sec. 13.*

30. Selectmen are not responsible for the misconduct of

surveyors, collectors, or other officers to whom warrants are directed, nor are collectors responsible except for their own illegal proceedings. 3 *N. H. R.* 513; *R. S. ch. 45, sec. 16*. But surveyors may be so liable. 3 *N. H. R.* 516.

31. The word "selectmen" (when used in a statute) may be construed to mean the selectmen of the town to which the subject matter to be acted on belongs, or in which it is situate. *R. S. ch. 1, sec. 23*.

32. When any officer or board is named by their official title, in any statute, such designation may be construed to apply to the officer or board of the town or district within and for which they are qualified to act in such capacity. *R. S. ch. 1, sec. 24*.

33. Selectmen are general agents for towns, in respect to pecuniary matters; and unless restrained by a special vote, are warranted in paying any existing debts of the town which are of a nature requiring immediate payment—2 *N. H. R.* 251. They may bind the town by note for the support of a pauper—7 *N. H. R.* 298; and waive notice of the sums expended—3 *N. H. R.* 38; or employ counsel—14 *Me. Rep.* 20.

34. An agent appointed by a vote of the town for a particular purpose can do no act which is not authorized by such vote. 9 *N. H. R.* 363.

35. It is an incorrect practice in towns to set up the office of collector at auction. 6 *N. H. R.* 183. A proper choice should be made by the town, and the compensation be fixed by the town, or left to be settled by the selectmen. *Ibid.*; 7 *N. H. R.* 114.

36. No person shall be compelled to serve in any town office two years successively, nor shall any person in any case be compelled to serve as a collector of taxes. *R. S. ch. 35, sec. 9*.

37. The form of the record of the choice of officers may be found in the appendix.

38. The other powers and duties of town officers may be found under their appropriate titles.



## CHAPTER 5.

## OF THE OATHS OF TOWN OFFICERS.

- |                                     |                                      |
|-------------------------------------|--------------------------------------|
| 1. Oath of office, how taken.       | 8. Penalty, when excused.            |
| 2. Oath of moderator and selectmen. | 9. Certificate of oaths recorded.    |
| 3. Form of oath.                    | 10. Record of oath, when sufficient. |
| 4. Notice to take oath in meeting.  | 11. Form of notice.                  |
| 5. Notice if officer not present.   | 12. Form of return thereon.          |
| 6. Neglect of constable, penalty.   | 13. Form of record of oath.          |
| 7. Neglect to take oath, penalty.   |                                      |

1. Every town officer shall take the oath of office by law prescribed, before the moderator, the town-clerk, one of the selectmen or a justice of the peace, who are hereby authorized to administer such oath. *R. S. ch. 35, sec. 1.*

2. The moderator must be sworn, or the meeting is illegal. *7 N. H. R. 114.* So the collector must be sworn, or his acts are illegal; *6 N. H. R.*; and the record must so state.

3. The form of the oath to be administered to town officers shall be: *R. S. ch. 35, sec. 2.*

“ You do solemnly swear that you will faithfully and impartially discharge and perform all the duties incumbent on you as a \_\_\_\_\_, according to the best of your abilities, agreeably to the rules and regulations of the constitution and laws of the state of New-Hampshire; so HELP YOU GOD.”

4. Any person chosen to any office may be notified by the moderator, town-clerk or one of the selectmen, in open meeting, to take the oath of office; and such person, if present, shall immediately, in open meeting, take such oath, or declare his refusal; and any person so chosen and notified, (not exempt from serving in such office) who shall neglect or refuse for one hour to take such oath, shall incur a penalty of five dollars, one half for the use of the town, the other half for the use of any person who will sue for the same. *R. S. ch. 35, sec. 3.*

5. The town-clerk shall forthwith, after the choice of any town officer, by a precept under his hand, direct a constable to notify the persons so chosen, whose names, and the offices to which they are so chosen, shall be designated therein,

to appear before him within six days from the day of the notice given, and take the oath by law prescribed; and the constable shall within four days give personal notice to the persons therein named, or leave a notice in writing at the usual place of abode of each of them, and make return of such precept and his doings therein, to such town-clerk within ten days. *R. S. ch. 35, sec. 4.*

6. Any constable, neglecting his duty in any of the foregoing particulars, shall incur a penalty of five dollars, one half to the use of the town, the other half to the use of the person who will sue for the same. *R. S. ch. 35, sec. 5.*

7. Every person so chosen and notified, not by law exempt from serving therein, who shall neglect, for six days after personal notice, or after notice left at his usual place of abode, or after his return in case he was absent when such notice was left, to appear before said town-clerk and take such oath, shall incur a penalty of five dollars, to be recovered and appropriated as in the preceding section. *R. S. ch. 35, sec. 6.*

8. Any person, so chosen and notified, who shall take the oath of office before one of the selectmen or a justice of the peace, and file a certificate thereof with the town-clerk within said six days, shall be exempted from said penalty. *R. S. ch. 35, sec. 7.*

9. The town-clerk shall make a record of every oath of a town officer taken in open town meeting, at the time of the election, and of every such oath taken before him at any other time and place, the import of which record may be that the officer took the oath of office prescribed by law; and he shall record and keep on file every certificate filed with him pursuant to the preceding section. *R. S. ch. 35, sec. 8.*

10. A record of an oath, "sworn into office," is insufficient. 6 *N. H. R.* 182. So, also, "Qualified by F. Chase, Esq." 9 *N. H. R.* 170.

11. The form of the precept issued by the town-clerk to notify officers to take the oath of office, may be as follows:

*To S. M., one of the constables of the town of N.*

The following is a list of the persons who were this day chosen into office, at a meeting of the inhabitants of said town, and of whom an oath is by law required, and of the offices to which they were respectively chosen, viz :

A. B., C. D., E. F., surveyors of highways.

N. B., P. D., constables, &c. &c.

You are hereby required, in the name of the state of New-Hampshire, within four days from the date hereof, to give personal notice to each person above named, or to leave a notice in writing at his usual place of abode, to appear before me within six days from the time you shall give such notice, and take the oath of office by law prescribed.

Hereof fail not, and make return of this precept, and of your doings therein, to me within ten days from the date hereof. Given under my hand this tenth day of March, in the year 1843.

G. M., *Town-Clerk of N.*

12. The form of the constable's return on the back of such precept may be as follows :

N                   , *March 16, 1843.* Agreeably to the within precept I have this day notified A. B., C. D., and N. B., to appear and take the oath of office as herein directed, by reading to A. B. this warrant, and by leaving an attested copy of this warrant at the usual place of abode of C. D. and N. B.

S. M., *Constable of N.*

13. The record of the oath of office should state the day on which the oath was administered, and should be signed by the person who administered the oath, unless administered in open meeting, thus :

N                   , *March 14, 1843.* Personally appeared A. B., surveyor of highways, and N. B., constable, and severally took the oath of office by law prescribed : before me.

R. P., *Selectman of N.*

If the oath is administered in open meeting, the record may be thus :

Chose A. B. surveyor of highways, who, being present, took the oath of office by law prescribed.



## CHAPTER 6.

## OF TOWN LINES.

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|--|--|
| 1. Perambulation of lines.                         | 9. Form of return of perambulation by selectmen. |
| 2. Return, how made and recorded.                  | 10. Form of return of perambulation by agent.    |
| 3. Notice, how given.                              | 11. Record, how made.                            |
| 4. Penalty for neglect.                            | 12. Form of petition on disagreement.            |
| 5. If towns disagree, proceedings.                 | 13. Duty of unincorporated places.               |
| 6. Westerly line of state.                         | 14. Powers of selectmen and court.               |
| 7. Form of notice.                                 | 15. Mistake in lines, how corrected.             |
| 8. Form of appointment of an agent to perambulate. | 16. Legislature may alter lines.                 |

1. The lines between the towns in this state shall be perambulated, and the marks and bounds renewed, once in every seven years forever, by the selectmen of such towns, or by such persons as they shall in writing appoint for that purpose. *R. S. ch. 37, sec. 2.*

2. A return of such perambulation shall be made, particularly describing the courses and distances, and the marks and monuments of such lines; which shall be signed by the selectmen, or persons making the same, and recorded in the respective town books. *R. S. ch. 37, sec. 3.*

3. The selectmen of the town first incorporated, or if both were incorporated on the same day, of the town which is highest in the proportion of public taxes, shall give to the selectmen of the town adjoining, notice of the time and place of meeting for such perambulation, ten days before the day of meeting. *R. S. ch. 37, sec. 4.*

4. If the selectmen whose duty it is to give such notice shall neglect to notify as aforesaid, or shall neglect to attend agreeably to such notice; or if the selectmen of any town, after being duly notified, shall neglect to attend; or if any selectmen shall neglect to cause a record of such perambulation to be made and recorded as aforesaid, each selectman so neglecting shall forfeit twenty dollars, one half for the use of the town whose selectmen have done

their duty, and the other half to the use of such of said selectmen as shall sue for the same. *R. S. ch. 37, sec. 5.*

5. When the selectmen of adjoining towns shall disagree in renewing and establishing the lines and bounds of such towns, the court of common pleas for the county in which the town first incorporated, or (if both were incorporated on the same day,) paying the highest tax as aforesaid, is situate, upon petition and after notice to the other town interested, shall by themselves, or by a committee for that purpose, examine said disputed lines, and their decision thereon shall be final, and the court may order either or both towns to pay the costs, as they may think just. *R. S. ch. 37, sec. 6.*

6. The northerly and southerly lines of towns adjoining Connecticut river are continued and extended across said river to the westerly line of the state, and the west line of the state is declared to be the western boundary of such towns. *R. S. ch. 37, sec. 1.*

7. The notice to selectmen for the perambulation, may be thus :

*The selectmen of the town of M., to the selectmen of the town of P.*

Gentlemen : The subscribers, selectmen of said M., being the most ancient of said towns, hereby give you notice to meet at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, for the purpose of perambulating and running the lines between said towns, and renewing the marks and bounds, according to the law of the state ; at which time and place, and for which purpose, you are hereby requested to attend.

Dated at said M., this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

A. B. }  
C. D. } *Selectmen of M.*  
E. F. }

8. The appointment of an agent to perambulate the lines may be as follows :

*To S. L., of M.*

We the subscribers, selectmen of the town of M., by virtue of the law of this state, do hereby appoint you to perambulate and run the dividing lines between said town and the town of P., and renew the marks and bounds thereon ; and you are to make return of your proceedings into the office

of the town-clerk of said M. as soon as you have completed this service.

Given under our hands this            day of            , 18   .

A. B. }  
C. D. } *Selectmen of M.*  
E. F. }

9. The return of such perambulation may be as follows :

Agreeably to a notice given to the town of M. by the town of P., to meet at            , on the            day of            , at            of the clock in the            noon, for the purpose of perambulating and running the lines between said towns, and renewing the marks and bounds, according to law, we the subscribers, selectmen of said towns, met at the time and place, and for the purpose aforesaid, and do make the following return of our doings :

We began at the northeast corner of said M., and the northwest corner of said P., at a stone monument marked M. and P., which is established as the corner bound : the line then runs south ten degrees west, five hundred and twenty rods, to a large rock marked also M. and P., &c. &c.

In witness whereof we have hereunto mutually set our hands, this            day of            , A. D. 18   .

A. B., C. D., E. F., *Selectmen of M.*  
G. H., I. K., L. M., *Selectmen of P.*

10. If the perambulation is made by an agent, the return may be as follows : striking out the words “selectmen of said towns,” and inserting instead—the selectmen of said M. on the one part, and G. H., duly appointed an agent for said P., on the other part.

11. The appointment of an agent, if any, and the return of the perambulation, should be recorded in the record book of each town, and the town-clerk should certify at the bottom of each : “A true copy of the original. Attest : R. M., *Town-Clerk.*”

12. If the parties disagree about the line, the form of a petition to the court of common pleas may be as follows :

*To the Honorable Justices of the Court of Common Pleas,  
to be holden at Exeter, in and for the county of Rock-  
ingham, on the first Tuesday of February next.*

Respectfully represent the subscribers, selectmen of the

town of M., in said county, that on the                      day of                      last part, pursuant to notice previously given, they met the selectmen of the town of P., in said county, for the purpose of perambulating the lines between said towns, and renewing the marks and bounds thereon, but that on such perambulation the said parties did and do still disagree in renewing and establishing the lines and bounds of said towns: Wherefore your petitioners request your Honors to establish said disputed lines, and renew the marks and bounds thereon.

A. B., C. D., E. F., *Selectmen of M.*

13. The duty of perambulating lines extends to unincorporated places. *R. S. ch. 38, sec. 1.*

14. Selectmen have no authority to alter the lines of towns, nor has the court of common pleas, but only to agree or decide where the existing line is; and such agreement or decision will be conclusive on the subject. *3 N. H. R. 265.*

15. A mistake in the charter of a township respecting a line, cannot be corrected by a court of law in a suit between such town and an individual. *5 N. H. R. 280.*

16. The legislature may determine or alter the lines of towns at pleasure. *5 N. H. R. 280; 3 N. H. R. 532.*

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## CHAPTER 7.

### OF PROPRIETARY RECORDS.

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|--|--|
| 1. If no proprietors' clerk, records to be deposited with town-clerks.<br>2. If lands lie in more than one town, where deposited.<br>3. When propriety dissolved.<br>4. Town may recall, when. | 5. Penalty for retaining records.<br>6. Copies, how certified.<br>7. Effect of such copies.<br>8. Fees for copies.<br>9. Penalty for not making copies.<br>10. Penalty for destroying records. |
|--|--|

1. If in any town, having fifty families or more settled

therein, there is no clerk of the proprietors of the common lands lying in such town residing therein, the town-clerk thereof shall demand and receive the proprietary records of any person having the possession thereof, and shall keep the same with the records of such town; and any person having possession thereof shall deliver the same to such town-clerk. *R. S. ch. 143, sec. 17.*

2. If such proprietary records relate to lands lying in more towns than one, they shall be deposited in the office of the town-clerk of the town first incorporated, or in the office of the secretary of state. *R. S. ch. 143, sec. 18.*

3. When the propriety of any town in this state is dissolved, or when the meeting of the proprietors of any common and undivided lands shall be dissolved, and the clerk thereof shall resign, decease or become incapacitated, any person, (the town-clerk of any town having fifty or more families excepted,) having in his possession any record or document appertaining to such propriety, shall file and deposit it with the secretary of state, who may demand and receive the same. *R. S. ch. 143, sec. 19.*

4. Whenever there shall be fifty families in any such town, and such town shall vote that the town-clerk shall keep such records and documents, or whenever the proprietors shall duly appoint a clerk thereof, the secretary shall deliver to such town-clerk, or proprietors' clerk, on demand, the records and documents to him belonging, taking his receipt therefor. *R. S. ch. 143, sec. 20.*

5. If any person shall willfully retain or keep any records or documents appertaining to the propriety of any common and undivided lands, contrary to the provisions of the four preceding sections, he shall forfeit for each offence one hundred dollars, to the use of any person who will sue therefor, or be punished by fine not exceeding five hundred dollars. *R. S. ch. 143, sec. 21.*

6. While the records and documents aforesaid are in the possession of the secretary of state, or of any town-clerk, he shall make out, certify and deliver copies of any part thereof, when thereto required, upon the payment or tender of the legal fees therefor. *R. S. ch. 143, sec. 22.*

7. All copies of the records and documents aforesaid, when made and certified as aforesaid, shall be as effectual to all intents and purposes as copies by other certifying officers. *R. S. ch. 143, sec. 23.*



8. The fees for any copies aforesaid shall be the same as are by law allowed to clerks of the court of common pleas for copies. *R. S. ch. 143, sec. 24.*

9. If the secretary of state, or any town or proprietors' clerk, shall refuse or neglect, within a reasonable time after the payment or tender of his fees therefor, to make out, certify and deliver to any person a copy of any such record or document in his possession, he shall forfeit one hundred dollars to any person who will sue therefor, and be liable for all damages sustained by such neglect or refusal. *R. S. ch. 143, sec. 25.*

10. If any person shall willfully destroy any proprietary record or document, or shall aid therein, or shall carry or aid in carrying any such record or document out of this state, he shall be liable for all damages sustained to any person injured thereby, and such offence shall be a misdemeanor, for which the offender may be indicted and punished accordingly. *R. S. ch. 143, sec. 26.*

## CHAPTER 8.

### OF ACTIONS BY AND AGAINST TOWNS.

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|---|---|
| 1. Towns are bodies corporate.  | 8. Neglect of collector, penalty.         |
| 2. Service on town, how made.   | 9. If not paid within sixty days, remedy. |
| 3. Trustee process, liable to.  | 10. Contribution, who entitled to.        |
| 4. Thirty days notice given.  | 11. Powers of selectmen.                  |
| 5. Property of town liable.   | 12. Suits for penalty by towns.           |
| 6. If no property found, copy of execution to be left with selectmen. | 13. May be tried before any justice.      |
| 7. Selectmen to assess tax therefor.                                  | 14. Inhabitants may be witnesses.         |
|   | 15. Fines to be paid over.                |

1. The inhabitants of every town in this state are a body politic and corporate, and by their corporate name may sue and be sued, prosecute and defend in any court or elsewhere. *R. S. ch. 31, sec. 1.*

2. Any writ or mesne process against any town may be served by giving to the town-clerk, if any there be, or leaving at his usual place of abode, an attested copy of the writ, and by giving to one of the selectmen, if any there be, or leaving at his usual place of abode, a like copy; or if there be no town-clerk or selectmen, by giving such copy to one of the principal inhabitants, or leaving the same at his usual place of abode. *R. S. ch. 183, sec. 8.*

3. A town is liable to be trusted like an individual, and the selectmen are the proper persons to make the disclosure.

4. Thirty days notice of any suit is to be given to the town. *R. S. ch. 183, sec. 1.*

5. The goods and estate of towns may be taken on execution, and appraised or sold, in the same manner as the property of other corporations. *R. S. ch. 198, sec. 1.*

6. If no such goods or estate are found, an attested copy of the execution shall be left with one of the selectmen. *R. S. ch. 198, sec. 2.*

7. The selectmen, upon such copy being so left, shall assess the inhabitants of such town in a sum sufficient to satisfy such execution and costs, and collect the same by a collector by them appointed, within thirty days after. *R. S. ch. 198, sec. 3.*

8. If the collector to whom any warrant or list of taxes shall be committed under this act, shall neglect to collect and pay over such taxes to the selectmen, within thirty days after he shall receive the same, the selectmen may issue an extent against him. *Ibid., sec. 4.*

9. If such execution shall not be satisfied within sixty days after a copy of such execution is left as aforesaid, such execution may be levied upon the goods and chattels of the selectmen; and, if they are insufficient, upon the property of any inhabitant of such town, or owner of property situate therein. *Ibid., sec. 5.*

10. Every person, upon whose property an execution against any town has been levied, shall have contribution against the other inhabitants or owners of property therein, for the sums so levied, and for damages, and shall recover double costs. *Ibid., sec. 6.*

11. Selectmen are general agents for the town as to pecuniary matters; and, unless restricted by a special vote, may pay any existing debts of the town, which are of a nature requiring immediate payment—2 *N. H. R. 251.*

They may bind the town by note for the support of a pauper, whether a suit is commenced or not—7 *N. H. R.* 298; may waive notice of the sums expended by another town—3 *N. H. R.* 38; may employ counsel—14 *Maine R.* 20; and commence or settle suits for the town, unless an agent is appointed for the purpose.

12. When any penalty or forfeiture, or any part thereof, is given to any town by any penal statute, the selectmen may sue therefor in the name of the town, which shall be entitled to the benefit and shall defray the expenses of such prosecution, or the selectmen may remit any such penalty or forfeiture. *R. S. ch. 211, sec. 5.*

13. Any such prosecution may be brought and tried before any justice of the peace of the town, notwithstanding the penalty, or a part of it, may belong to such town. *R. S. ch. 211, sec. 6.*

14. Inhabitants of the town are not disqualified from being witnesses in any action in favor of or against such town. 1 *N. H. R.* 275; 6 *N. H. R.* 164.

15. Every justice shall pay over to the town to whom any fine or forfeiture belongs every such fine or forfeiture by him received, within six months after the receipt of the same, on penalty of paying double the amount. *R. S. ch. 222, sec. 12.*

## TITLE II.

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### OF THE ELECTION OF STATE AND COUNTY OFFICERS.

CHAPTER 9. Of the rights and qualifications of voters.

CHAPTER 10. Of the manner of conducting elections.

CHAPTER 11. Of the election of governor, counsellor and senator.

CHAPTER 12. Of the election of representatives in congress.

CHAPTER 13. Of the election of electors of president and vice-president.

CHAPTER 14. Of the election of county officers.

CHAPTER 15. Of the election of representatives to the general court.

CHAPTER 16. General provisions concerning elections.

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### CHAPTER 9.

#### OF THE RIGHTS AND QUALIFICATIONS OF VOTERS.

- |                                   |                                |
|-----------------------------------|--------------------------------|
| 1. Who is a legal voter.          | 9. "Pauper"—what constitutes.  |
| 2. Who is deemed a pauper.        | 10. Computation of time.       |
| 3. Alien cannot vote.             | 11. "Temporary absence," what. |
| 4. Residence, how long required.  | 12. "Home," what constitutes.  |
| 5. Not lost by temporary absence. | 13. Same subject.              |
| 6. Students excluded.             | 14. Intention of voter.        |
| 7. Rights of voters.              | 15. "Pauper," when.            |
| 8. "Home"—what constitutes.       | 16. "Home," evidence of.       |
|                                   | 17. "Aliens," who are not.     |

1. Every male inhabitant of each town, being a native or naturalized citizen of the United States, of the age of

twenty-one years and upwards, excepting paupers, and persons excused from paying taxes at their own request, shall have a right, at any meeting, to vote in the town in which he dwells and has his home. *R. S. ch. 24, sec. 1.*

2. No person shall be considered a pauper, within the meaning of the preceding section, unless he has been assisted as such within ninety days prior to the meeting in which he claims the right to vote. *R. S. ch. 24, sec. 2.*

3. No alien shall be entitled to vote at any town meeting. *Ibid., sec. 3.*

4. No person shall be considered as dwelling or having his home in any town, for the purpose of voting or being voted for at any meeting therein, unless he shall have resided within this state six months, and within such town three months next preceding the day of said meeting. *Ib., sec. 4.*

5. When such a residence is acquired by any person in any town, it shall not be interrupted or lost by a temporary absence therefrom, with the intention of returning thereto as his home. *Ibid., sec. 5.*

6. No person attending at any college, academy, or other literary institution in any town, for the purpose of obtaining an education, shall be entitled to vote therein, nor lose his right at his former residence. This shall not apply to any person who had a previous legal residence in any such town, or who has removed and taken up his permanent residence therein. *Ibid., sec. 6.*

7. Every person qualified as provided in section 1 of this chapter, may vote for governor—*Constitution of N. H. sec. 42*; for counsellor—*Ibid., sec. 60*; for senator—*Ibid., sec. 28*; representatives to the general court—*Ibid. sec. 13*; representatives in congress—*Constitution U. S. sec. 2*; electors of president and vice-president, and town officers.

8. Where a person, having a wife residing in G., went to K., and there labored eight months, returning to G. on Saturday nights, and passing Sundays with his wife, it was held that his home was in G. *3 N. H. R. 125.*

9. A person in order to be considered a pauper must have been assisted by the town in which he claims the right to vote.

10. In computing time, the day of the meeting is to be excluded. *R. S. ch. 1, sec. 25.* If the meeting is holden March 14, the voter must have resided within the state on September 13, and in the town on December 13.



11. What is a "temporary absence," is a question of much practical difficulty. The following points have been decided :

A party, having acquired a home within a town, does not lose it by absence for any purpose of a temporary nature, with the intention of returning : as by absence ten weeks, to do a job of work—11 *Mass. R.* 424 ; or absence at college—10 *Mass. R.* 488 ; or at sea—4 *Mass. R.* 312. "If a person, having his home in one place, go to another for temporary purposes, but with an intention to return, his domicile (or *home*) is not changed by such absence ; nor does he acquire a new domicile in the place of such temporary residence. If a person go on a voyage to sea, or to a foreign country for health or pleasure, or business of a temporary nature, with an intention to return, no one supposes his domicile to be changed thereby. But, sometimes, when there has been a removal for temporary purposes at first, there may be engrafted on it, subsequently, an intention of permanent residence. In such cases, length of time is a material ingredient. If a person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of present domicile, it becomes his place of domicile, notwithstanding he may have a floating intention to go back at some future period." *Judge Story.*

12. What constitutes a person's "dwelling place or home," is also a difficult question to determine. Judge Story lays down the following rules :

"That place is the home, or domicile, of a person, in which his habitation is fixed, without any present intention of removing therefrom. The question of domicile is often one of great difficulty and nicety. It is compounded partly of matter of fact and partly of law. It is often a mere question of intention ; sometimes of express intention, and sometimes of presumptive intention, from acts and conduct. The mere dwelling or residence in a place, is not, of itself, sufficient to make it the domicile of the party. He must be there with the intention of remaining. The act of residence must be coupled with the intention of making it the real, substantial home of the party, excluding all others.

"A person who is of age to choose a domicile for himself still retains the paternal domicile while he continues to re-

main with his parents. But when he is emancipated, or has acquired a domicile of his own, he no longer follows the paternal domicile. The domicile of birth easily reverts, and it requires fewer circumstances to establish in proof that a party has reverted to the domicile of his birth, or family domicile, than to establish a foreign domicile. The place where a person lives is, *prima facie*, taken to be the place of his domicile, until other facts establish the contrary. If a person removes to another place, with the intention to remain, the latter becomes instantaneously his place of domicile. It is of no consequence that he has a floating intention to return at some future period.

“The place where the family of a married man resides is generally considered as his domicile; but this may be controlled by circumstances. For if the place be only a temporary establishment for his family, or for temporary purposes, it may be different. If a married man has his family fixed in one place, and does his business in another, the former is considered as the place of domicile. If a married man has two places of residence at different times of the year, that will be esteemed his domicile which he selects, considers and describes as his fixed home, or which is the centre of his affairs.

“Mere intention to acquire a new domicile, without the fact of removal, avails nothing; neither does the fact of removal without the intention to make it a home.”

13. “Dwells and has his home,” means some permanent abode, or residence, with an intention to remain, or at least without any present intention of removing. 3 *Greenleaf R.* 229.

14. It will be seen that the intention of the person claiming the right to vote is material. This intention to make a place his home must exist at the commencement of, and during the whole term prescribed by, law. Removal to another place within the six months, and a residence there of one day, with an intention of remaining, will destroy the six months’ residence.

15. In Maine it is decided that if a person has directly or indirectly received aid from the town within three months of the day of election, whether he has repaid it or not, he is not a legal voter; but if he received such aid more than three months before the election, he is a voter, whether he owes the town for it or not. 7 *Greenleaf R.* 499.

16. If a person votes illegally in one town, it does not necessarily deprive him of his vote in another town, where he has a legal right ; but it may be considered by the selectmen as evidence, coupled with residence, and other facts, of his intention to make that other town his home.

11 *Mass. R.* 353.

17. The children of American parents, though born in a foreign country, are not aliens, if they return here, and claim the rights of citizenship.

## CHAPTER 10.

### OF THE MANNER OF CONDUCTING ELECTIONS.

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|---------------------------------------|--|
| 1. List of voters to be posted.       | 21. Penalty for fraud of selectmen.              |
| 2. List, how to be corrected.         | 22. Penalty for fraud of moderator or selectmen. |
| 3. All proper corrections to be made. | 23. Penalty for other offences.                  |
| 4. List to be open for examination.   | 24. Penalties, how recovered.                    |
| 5. Name must be on list, unless.      | 25. Form of list of voters.                      |
| 6. List to be present at meeting.     | 26. List to be corrected before used.            |
| 7. Ballot-boxes to be provided.       | 27. What is a "public place."                    |
| 8. What are ballots.                  | 28. Duties of selectmen as to list.              |
| 9. Moderator to receive votes.        | 29. Notice given before name erased.             |
| 10. Votes, several on one ticket.     | 30. What is "accidentally omitted."              |
| 11. Ballots, when deemed blanks.      | 31. What is a ballot.                            |
| 12. Votes, by whom counted.           | 32. Can minor be elected to office?              |
| 13. Majority, how determined.         | 33. Returns must state, what.                    |
| 14. Same subject.                     | 34. List of rateable polls.                      |
| 15. Votes, how declared and recorded. | 35. Illegal voter liable.                        |
| 16. Balloting, when closed.           | 36. Selectmen or moderator indictable.           |
| 17. Statutes to be present.           | 37. Majority, how determined.                    |
| 18. List of rateable polls made.      |  |
| 19. Penalty for treating at election. |  |
| 20. Penalty for voting illegally.     |  |

1. The selectmen shall lodge with the town-clerk, and

shall also cause to be posted up in one or more public places in the town, an alphabetical list of all the legal voters therein, fifteen days at least prior to any meeting for the choice of state or county officers, representatives in congress, or electors of president and vice-president. *R. S. chap. 25, sec. 1.*

2. The selectmen shall be in session, at some convenient place, for so long a time as shall be necessary, within three days next preceding any such meeting, for the purpose of correcting said list; and one session shall be for two hours at least on the day and before the opening of the meeting. Notice of the times and places of holding said sessions shall be given upon said lists at the time of posting up the same. *Ibid., sec. 2.*

3. The selectmen shall hear all applications for the insertion of the name of any person on said list, or the erasure of any name therefrom; and may examine the party, or any witnesses thereto, upon oath, which may be administered by any member of the board. They shall insert the name of every legal voter omitted, and erase the name of every person not a legal voter. *Ibid., sec. 3.*

4. The list, as corrected by the selectmen, shall, at all times before the opening of any meeting, be open for the examination of every citizen of the town. *Ibid., sec. 4.*

5. No person shall be allowed to vote at any meeting aforesaid, unless his name is inserted upon said list before the opening of such meeting; and the vote of no person whose name is then upon said list shall be rejected; provided, however, that this section shall not be so construed as to prevent any person from voting at any election, whose residence has, with the knowledge of the selectmen, been for and during the year next preceding the said election, in said town, but whose name has been accidentally omitted from said list. *Ibid., sec. 5.*

6. The selectmen shall be present at the opening of such meeting, and shall have then and there present the list of legal voters, corrected as aforesaid. *Ibid., sec. 6.*

7. A suitable box or boxes shall be provided by the selectmen, at the expense of the town, in which to receive the ballots of the voters. *Ibid., sec. 7.*

8. Each ballot shall contain the name of every person voted for, and may be either written or printed. Blank



pieces of paper shall not be counted as ballots, votes or tickets. *Ibid.*, sec. 8.

9. Every voter shall deliver his ballot to the moderator, in open meeting; and the moderator, on receiving the ballot, shall direct the town-clerk to check the name of the voter on said list, and shall, without inspecting the name of any person voted for, examine said ballot so far only as to determine whether the same contains more than one ticket: if it do not, he shall place the ballot in the balloting box; but if it do, he shall make it manifest to the meeting, and reject the same. *Ibid.*, sec. 9.

10. In balloting for state and county officers, representatives in congress, or electors of president and vice-president, the moderator shall call for the ballots for so many of said officers as it may be necessary to vote for at such meeting, to be given in on the same ticket, as a majority of the voters present may request or designate, with the respective offices designated against the name of each person voted for. *Ibid.*, sec. 10.

11. If several officers are to be voted for upon one ticket, no person shall be obliged to vote for each of said officers; and when more than one description of officers is voted for on the same ticket, any ticket which does not contain at least one vote for each description of officers shall be regarded as a blank vote, as to the description of officers omitted. *Ibid.*, sec. 11.

12. The selectmen and town-clerk shall assist the moderator in sorting and counting said votes, but no other person shall in any manner interfere therewith. *Ibid.*, sec. 12.

13. In determining the result of any election, the whole number of persons voting for any officer shall first be ascertained by counting the whole number of separate tickets given in; and no person shall be deemed to be elected to any office who shall not have received a majority of the whole number of tickets given in for such office. *Ibid.*, sec. 13.

14. If a number of candidates greater than the requisite number shall severally receive a majority, a number equal to the requisite number having the greatest excess over such majority shall be declared to be elected; but if the number to be elected cannot be completed by reason of any two or more candidates having received an equal majority, one or more being greater than the requisite number, the candidates



having such an equal majority shall be declared not to be elected. *Ibid.*, sec. 14.

15. The moderator shall, in said meeting, in presence of the selectmen and town-clerk, sort and count the said votes, and make a public declaration of the whole number of the tickets given in, with the name of every person voted for, and the number of votes for each person, and the town-clerk shall make a fair record thereof at large in the books of the town. *Ibid.*, sec. 15 ; *Const. N. H.* sec. 32.

16. No ballot shall be received and counted after the state of the votes shall have been declared as aforesaid. *Ibid.*, sec. 16.

17. The town-clerk shall have present at the polls, at the opening thereof, all the statute laws of this state in force relating to the subject of elections. *Ibid.*, sec. 17.

18. Upon the back of the list of voters used at the annual meeting, the selectmen shall enter the names of all the rateable polls in the town not included in said list, and shall file the same with the town-clerk within one week after the town meeting. *Ibid.*, sec. 18.

19. If any person shall, directly or indirectly, give spirituous liquor to any voter at any time, with a view to influence any election, or as a treat for his vote, or for the honors bestowed on any candidate at such election, he shall be punished by a fine not exceeding twenty dollars for each offence. *Ibid.*, sec. 19.

20. If any person, at any meeting for the choice of officers, shall give in more than one vote for any officer voted for at such meeting ; or if any person under the age of twenty-one years, or any alien not naturalized, or any person who is not a legal voter, shall give in any vote for any officer at such meeting ; or if any person, being under examination as to his qualifications as a voter before the board of selectmen, shall give any false name or answer, he shall be punished by fine not exceeding thirty dollars for each offence, or may be imprisoned in the common jail not exceeding six months. *Ibid.*, sec. 20.

21. If any selectman, at any session holden for the correction of the list of voters, on receiving satisfactory evidence that any person whose name is on said list is not a legal voter, shall neglect or refuse to erase such name from said list, or shall neglect or refuse to insert on said list the name of any person who is a legal voter, having satisfactory

evidence thereof, or shall neglect or refuse to hear or examine any evidence offered for such purpose, in either of the cases aforesaid; or shall at any time insert on said list the name of any person not a legal voter, knowing such to be the case; or shall knowingly erase therefrom or omit to insert the name of any legal voter, he shall be punished by fine not exceeding fifty dollars for each offence. *Ibid.*, sec. 21.

22. If any moderator or selectman, at any such meeting, shall fraudulently receive and count any illegal vote, or shall fraudulently omit to receive and count any legal vote, or shall fraudulently embezzle any vote from the number of legal votes cast, or add any vote thereto, or shall receive or count any vote given at such meeting by proxy, and without the personal delivery of such vote by the person entitled to give the same, he shall for each offence be punished by fine not exceeding fifty dollars. *Ibid.*, sec. 22.

23. If any person shall be guilty of any offence against any provision of this chapter, the penalty for which is not herein specified, he shall be punished by fine not exceeding thirty dollars for each offence. *Ibid.*, sec. 23.

24. Fines may be recovered by information filed by the attorney general or solicitor, or by indictment by the grand-jury, or the offender may be required, on complaint before a justice of the peace, to recognize for his appearance at the next term of the court of common pleas, to answer to said complaint. *See ch. 16, sec. 2.*

25. The form of the list of voters, which must be arranged alphabetically, may be as follows:

An alphabetical list of all the legal voters in the town of Hampton, in the county of Rockingham, as made out by the selectmen the twenty-seventh day of February, 1843.

A.

B.

The selectmen give notice that they will be in session, for the purpose of correcting the above list, at \_\_\_\_\_, in said Hampton, on Saturday, the eleventh day of March next, at one o'clock in the afternoon; and also at the same place, on Tuesday, the fourteenth day of March next, from seven

o'clock until nine o'clock in the forenoon, the hour of opening the town meeting.

A. B. } *Selectmen*  
C. D. } *of*  
E. F. } *Hampton.*

Hampton, February 27, 1843.

26. The list of voters should be corrected before every meeting for the choice of officers in which it is required to be used, and the date should be altered whenever it is posted up.

27. As to what is a "public place," refer to *chapter 2*, 'of warning town meetings.'

28. The selectmen are bound, by their oath of office, to insert the name of every legal voter, and erase the name of every person not a legal voter, when satisfied of the fact, whether any application is made to them for the purpose or not, and are liable to a penalty for doing otherwise.

29. When the name of any person is upon the posted list, it should not be struck off without giving him notice, and a chance to be heard, unless upon clear and undoubted proof that he is not a legal voter.

30. The liberty of inserting any name "accidentally omitted," is intended to apply to the case of well known inhabitants *omitted by mistake*, and not to persons who may have resided in the town one year, but were not known to the selectmen as legal voters, and whom they did not intend to put on the list.

31. Any ticket having on it the name of one person for any office, is a ballot as to such office. In Maine a ballot for a person not eligible to the office is considered a blank—7 *Greenleaf R.* 497; but in this state it is not settled.

32. Whether a minor can be legally elected to any office, is very doubtful. 2 *N. H. R.* 555.

33. The record must state how many ballots (or tickets) there were for every office, the name of every person who received a vote, and how many votes there were for each person. This must always be done when the voting is by the check-list. To omit any one of these particulars, or to record any votes as *scattering*, or to state the vote of the successful candidate only, is an error. For want of proper care a very large proportion of the returns are erroneous, and mischief frequently happens in consequence.

34. The making out a list of the rateable polis is dispensed

with ; by statute all persons on the list of voters are deemed to be rateable polls, and the name of "every male inhabitant, of the age of twenty-one years and upwards," not on such list, is to be entered on the back of such list, and the whole filed with the town-clerk. *R. S. ch. 29, sec. 3.*

35. Any person, not a legal voter, is liable for voting, even if his name is on the list of voters, or although he did not know what were the qualifications of a voter.

36. Selectmen are indictable for any fraud or dishonest management in regard to the check list ; but fraud and dishonesty must be proved, and will not be presumed. *1 N. H. R. 88.* This is also true of the moderator. *Ibid.*

37. The mode of determining elections prescribed in this chapter applies to town as well as state and county officers.

## CHAPTER 11.

### OF THE ELECTION OF GOVERNOR, COUNSELLORS AND SENATORS.

- |                                   |                                  |
|-----------------------------------|----------------------------------|
| 1. Meeting, when holden.          | 6. Form of return for governor.  |
| 2. Return of votes, how made.     | 7. Form of superscription.       |
| 3. Return, when to be made.       | 8. Form of return for counsellor |
| 4. Receipt therefor to be given.  | and senator.                     |
| 5. Penalty for neglect to return. |                                  |

1. The meetings of the several towns for the election of governor, counsellors and senators, shall be holden on the second Tuesday of March annually, and at no other time. *R. S. ch. 26, sec. 1.*

2. The town-clerk shall make out a fair and exact copy of the record of all votes given in at any such meeting for governor, for counsellor and for senator, upon distinct and separate pieces of paper ; shall certify upon each copy that the same is a true copy of said record, and shall seal up said copies separately, and direct to the secretary of state,

with a superscription upon each, expressing the purport thereof. *Ibid.*, sec. 2.

3. He shall cause such attested copy to be delivered to the sheriff of the county in which such town lies, thirty days at least before the first Wednesday of June, or to the secretary of state twenty days at least before said first Wednesday of June; and the sheriff or his deputy shall deliver all such certificates by him received, into the secretary's office, twenty days at least before the first Wednesday of June. *Ibid.*, sec. 3.

4. The sheriff, or secretary, upon the receipt of any such copy, shall give a receipt therefor, if requested. *Ibid.*, sec. 4.

5. If any town-clerk or sheriff shall neglect to make any return of votes in the manner aforesaid, he shall be punished by fine not exceeding one hundred dollars, nor less than twenty dollars. *Ibid.*, sec. 5.

6. The form of the return of votes for governor may be thus:

#### STATE OF NEW-HAMPSHIRE.

At a legal town meeting, duly notified and holden at Haverhill, in the county of Grafton, on the second Tuesday of March, in the year eighteen hundred and forty-three, the following votes of the inhabitants of said town, qualified to vote for senators, were given in for governor, and were received in presence of the selectmen of said town, in open meeting, by the moderator thereof, who in said meeting, in presence of said selectmen and of the town-clerk of said town, sorted and counted said votes, and at the close of the poll made a public declaration of the whole number of the tickets given in, the name of every person voted for, and the number of votes for each person, which was as follows:

For A. B.,	One hundred and ten votes.
For C. D.,	Ninety-six votes.
For E. F.,	Ten votes.

The whole number of tickets for governor given in at said meeting was two hundred and sixteen.

A true record. R. M., *Town-Clerk.*

A true copy of record. Attest: R. M., *Town-Clerk.*

The return should be sealed up, and the superscription or direction may be thus:

*To the Secretary of the State of New-Hampshire.*

A copy of the record of the votes given in for governor



in the town of Haverhill, on the second Tuesday of March, 1843.

8. The form of the returns of votes for counsellor and senator, and the superscription thereon, may be the same as for governor, substituting, "counsellor," or "senator," as the case may be, for "governor."

## CHAPTER 12.

### OF THE ELECTION OF REPRESENTATIVES IN CONGRESS.

- |                                |                                   |
|--------------------------------|-----------------------------------|
| 1. Meeting, when holden.       | 5. Return of votes, how made.     |
| 2. Return of votes, how made.  | 6. Penalty for neglect to return. |
| 3. Certificate of election.    | 7. Form of return.                |
| 4. Proceedings when no choice. | 8. Form of superscription.        |

1. The meeting for the choice of representatives in congress shall be holden on the second Tuesday of March, one thousand eight hundred and forty-three, and on the second Tuesday of March in every second year thereafter. *R. S. ch. 27, sec. 1.*

2. The return of votes for representatives in congress shall be made out, signed, certified, sealed, directed, transmitted, receipted for, examined and counted, at the same time and in the same manner as is herein before provided for the return of votes for senator. *Ibid., sec. 2.*

3. If any person shall appear to be elected a representative in congress upon such count by a majority of votes, he shall be declared to be duly elected; and the governor shall forthwith transmit to such person a certificate of such election, signed by himself, countersigned by the secretary, and with the seal of the state affixed thereto. *Ibid., sec. 3.*

4. If so many persons as are necessary shall not be elected, the governor, with advice of the council, shall cause precepts to be issued to the selectmen of the several towns, requiring them to warn meetings to be holden at the time specified

in said precepts, for the choice of so many representatives as may be necessary to fill such vacancy. *Ibid.*, sec. 4.

5. The votes given in at any such meeting shall be received, sorted, counted, declared, recorded and certified, and the return thereof made out, signed, certified, sealed and directed in the manner herein before directed; and the clerk shall transmit the same to the sheriff of the county in which such town lies, within ten days after such meeting, or shall transmit the same to the office of the secretary of state within fifteen days after such meeting; and every such sheriff shall transmit to the secretary's office all returns of votes by him received as aforesaid, within twenty days after said meeting. *Ibid.*, sec. 5.

6. If any town-clerk or sheriff shall neglect to make any return of votes as aforesaid, he shall be liable to the same penalty provided for neglect to make returns of votes for senator. *Ibid.*, sec. 9.

7. The form of the return may be thus:

#### STATE OF NEW-HAMPSHIRE.

At a legal town meeting, duly holden at Exeter, in the county of Rockingham, on the second Tuesday of March, in the year eighteen hundred and forty-three, the following votes of the inhabitants of said town, present and qualified to vote for representatives to the state legislature, were given in by ballot for four persons to represent this state in the congress of the United States for the term of two years from and after the third day of the said month of March, and were received in presence of the selectmen of said town, in open meeting, by the moderator thereof, who, in said meeting, in presence of said selectmen and the clerk of said town, sorted and counted said votes, and at the close of the poll made a public declaration of the whole number of tickets given in, the name of every person voted for, and the number of votes for each person, which was as follows:

For A. B.,	One hundred votes.
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For C. D.,	One hundred votes.
------------	--------------------

The whole number of tickets given in for representatives in congress at said meeting was one hundred.

A true record:	R. M., Town-Clerk.
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A true copy of record.	Attest: R. M., Town-Clerk.
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8. The form of the superscription may be the same as that for governor, substituting the words, *representatives in the congress of the United States*, for "governor."

## CHAPTER 13.

### OF THE ELECTION OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

- |                                  |                                   |
|----------------------------------|-----------------------------------|
| 1. Meeting, when holden.         | 5. Penalty for neglect to return. |
| 2. Return of votes, how made.    | 6. Form of returns of votes.      |
| 3. Return of votes by sheriff.   | 7. Form of superscription.        |
| 4. Receipt therefor to be given. |                                   |

1. The meeting for the choice of electors of president and vice-president shall be holden on the first Monday of November, one thousand eight hundred and forty-four, and on the first Monday of November in every fourth year thereafter ; and the governor shall seasonably issue precepts to the several towns, directing them to warn and hold meetings at the time and for the purpose aforesaid. *R. S. ch. 28, sec. 1.*

2. The return of votes for electors shall be made out, signed, certified, sealed and directed in the same manner herein before provided for the return of votes for senator ; and the town-clerk shall transmit the same to the sheriff of the county within seven days after said meeting, or to the office of the secretary of state on or before the last Wednesday but one of the same month. *Ibid., sec. 2.*

3. Each sheriff shall, on or before the said Wednesday, transmit to the secretary's office all returns of votes to him transmitted as aforesaid.

4. The sheriff or secretary to whom such returns of votes shall be delivered, shall, if requested, give a receipt therefor. *Ibid., sec. 3.*

5. If any town-clerk or sheriff shall neglect to make return of votes in the manner aforesaid, he shall incur the same penalty as in case of neglect to return votes for senator. *Ibid., sec. 10.*

6. The form of the return of votes for electors may be thus :

#### STATE OF NEW-HAMPSHIRE.

At a legal meeting of the inhabitants of the town of Lancaster, in the county of Coos, qualified to vote for senator, duly warned and holden at said Lancaster on the first Mon-

day of November, in the year eighteen hundred and forty-four, for the purpose of giving in their votes for six persons to be electors of president and vice-president of the United States :

A. B. was chosen moderator, to preside at said meeting, and took the oath of office prescribed by law.

And the votes given in for six persons, to be electors as aforesaid, by the inhabitants of said town qualified as aforesaid, were received, in the presence of the selectmen of said town, in open town-meeting, by the moderator thereof, who, in said meeting, in presence of the said selectmen and the clerk of the town, sorted and counted said votes, and at the close of the poll made a public declaration of the whole number of tickets given in, the name of every person voted for, and the number of votes for each person, which was as follows :

For J. B., One hundred votes.

For N. M., &c., &c., &c.

[Here insert the name of every person voted for, and the number of votes for each.]

The whole number of tickets given in at said meeting was

A true record. R. M., *Town-Clerk.*

A true copy of record. Attest : R. M., *Town-Clerk.*

7. The superscription may be thus :

*To the Secretary of the State of New-Hampshire.*

A copy of the record of votes given in the town of Lancaster, for electors of president and vice-president, November 3, 1844.

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## CHAPTER 14.

### OF THE ELECTION OF COUNTY OFFICERS.

- |                                |                         |
|--------------------------------|-------------------------|
| 1. Meeting, when holden.       | 5. Penalty for neglect. |
| 2. Who are eligible.           | 6. Form of return.      |
| 3. Return of votes, how made.  | 7. Form of direction.   |
| 4. Return of votes, when made. |                         |

1. There shall be chosen, on the second Tuesday of

March annually, by ballot, by the inhabitants of the several towns and places in each county qualified to vote for senators, a register of deeds, a treasurer and three road commissioners, each of whom shall hold his office until some other person is chosen and qualified in his stead. *R. S., ch. 20, sec. 1.*

2. No person is eligible to the office of register, treasurer or road commissioner, unless he is a resident of the county for which he is chosen. No person shall hold any two of said offices at the same time; and the acceptance of any office shall be a resignation of any office incompatible with it. *Ibid., sec. 2.*

3. The return of votes given in any town or place for any of said officers, shall be made out, signed, certified and sealed by the clerk thereof, in all respects as is provided for the return of votes for senator. *Ibid., sec. 3.*

4. The clerk shall direct such return to the justices of the court of common pleas for the county, with a superscription expressing the purport thereof, and shall transmit the same to said justices on or before the first day of the sitting of said court, at the next stated term after the month of March in each year. *Ibid., sec. 4.*

5. If the clerk of any town shall neglect to make any of the returns of votes aforesaid according to law, he shall, for each offence, be punished by fine not exceeding fifty dollars nor less than twenty dollars, for the use of the county. *Ibid., sec. 7.*

6. The form of the return of votes for register of deeds, county treasurer and road commissioners may be as follows :

#### STATE OF NEW-HAMPSHIRE.

At a legal town meeting, duly notified and holden at Francestown, in the county of Hillsborough, on the second Tuesday of March, in the year eighteen hundred and forty-three, the following votes of the inhabitants of said town, qualified to vote for senator, were given in for a register of deeds, a county treasurer and three road commissioners, and were received in presence of the selectmen of said town, in open town meeting, by the moderator thereof, who, in said meeting, in presence of said selectmen and of the clerk of the town, sorted and counted said votes, and at the close of the poll made a public declaration of the whole number of



tickets given in for each office, the name of every person voted for, and the number of votes for each person, as follows :

*For Register of Deeds :*

E. B. had one hundred votes.

J. L. had fifty votes.

A. W. had one hundred votes.

*For County Treasurer :*

N. B. had one hundred votes.

D. S. had one hundred votes.

*For Road Commissioners :*

A. B. had votes.

C. D. had votes.

The whole number of tickets given in for register of deeds was 250.

The whole number of tickets given in for county treasurer was 200.

The whole number of tickets given in for road commissioners was .

A true record. R. M., *Town Clerk.*

A true copy of record. Attest : R. M., *Town-Clerk.*

7. The return should be sealed up, and directed thus :

*To the Clerk of the Court of Common Pleas for the County of Hillsborough.* A copy of the votes given in the town of Francestown, for register of deeds, county treasurer and road commissioners, March 14, 1843.

## CHAPTER 15.

### OF THE ELECTION OF REPRESENTATIVES TO THE GENERAL COURT.

#### *Of towns not classed.*

1. Meeting, when to be holden.
  2. Certificate of election.
  3. Who are rateable polls.
  4. Town specially authorized, duty.
  5. List of such towns.
- Of the elections in classed towns.*
6. Meeting, when to be holden.
  7. Meeting, how warned.
  8. Warrant, how served and returned.
  9. List of voters to be posted.
  10. Lists, how corrected.
  11. Copy of list furnished.
  12. Proceedings at such meeting.

13. Clerk *pro tem.* chosen.

14. Penalty for neglect of duty.

15. List of classed towns.

#### *General Rules.*

16. Form of certificate of election in towns not classed.

17. Who are rateable polls.

18. Form of warrant for meeting in classed towns.

19. Form of return thereon.

20. Certificate on check list.

21. Form of certificate of election in classed towns.

22. Form of certificate when elected at adjourned meeting.

### OF TOWNS NOT CLASSED.

1. The meeting for the election of representatives to the general court, in towns not classed, shall be holden on the second Tuesday of March annually; but if the election of the requisite number shall not be effected on that day, the meeting may be adjourned to, and the election of the number deficient made on the following day, but not afterwards. *R. S., ch. 29, sec. 1.*

2. The certificate of election shall be made out, certified and signed in the same manner as the return of votes for governor; and the town-clerk shall also certify that the check list was duly posted up and used during the balloting on which such representative was chosen; the number of rateable polls in such town, and the number of voters upon the check list, as corrected on the day of such annual meeting. *Ibid., sec. 2.*

3. In determining the number of representatives to which any town is entitled, every male inhabitant of the age of twenty-one years and upwards shall be considered a rateable poll. *Ibid., sec. 3.*

4. The clerk of every town specially authorized to send a representative to the general court, shall note on the margin of the certificate of election the time when such authority was given. *Ibid.*, sec. 4.

5. Each of the following towns and places, not having the constitutional number of rateable polls, may send a representative to the general court until otherwise ordered, viz: Greenland, Newtown, Hampton-Falls, Centre-Harbor, Temple, Brookline, Middleton, Atkinson, South-Hampton, East-Kingston, Newington, Madbury, Allenstown, Poplin, Brookfield, Litchfield, Sharon, Gilsum, Roxbury, Surry, Sullivan, Langdon, Benton, Hebron, Orange and Dalton. *Ibid.*, sec. 5.

#### OF THE ELECTION IN CLASSED TOWNS.

6. The meeting for the election of the representative of any classed towns may be holden on any day in March except the second Tuesday thereof. *Ibid.*, sec. 6.

7. Such meeting shall be called by warrant, under the hands and seal of the selectmen of the town wherein the meeting is by law to be holden for that year, requiring the inhabitants of said classed towns, qualified to vote for senators, to meet at a certain place in said town, and at a certain time therein mentioned, and expressing the purpose of such meeting. *Ibid.*, sec. 7.

8. The selectmen shall post up an attested copy of such warrant at some public place in each of said towns, fifteen days at least before such meeting, and return such warrant, with their doings thereon, at the time and place of meeting. *Ibid.*, sec. 8.

9. The selectmen of the town wherein such meeting is by law to be holden, shall lodge with the clerk thereof, and cause to be posted up at some public place in said town, at least fifteen days previous to said meeting, an alphabetical list of all the legal voters of said town, and shall, at said meeting, enter on said list the name of every legal voter which shall be upon the list of voters of any town classed therewith. *Ibid.*, sec. 9.

10. The selectmen of each classed town shall hold sessions for the correction of the list of voters, in the manner hereinbefore provided for other towns, giving at least seven days' notice thereof; but no session shall be holden for such

purpose on the day of election, except in the town in which such election is to be holden. *Ibid.*, sec. 10.

11. An attested copy of the check list, as corrected by the selectmen of each classed town, shall be filed by them with the town-clerk of the town in which such meeting is to be holden, before the opening of such meeting, or, in his absence, with one of the selectmen. *Ibid.*, sec. 11.

12. At such meeting a moderator shall be chosen; and said moderator, and the selectmen and clerk of the town wherein such meeting is holden, and the legal voters of each town present, shall have the same rights and powers, perform the same duties, and be subject to the same liabilities and penalties, as if such meeting were a legal meeting of the inhabitants of one town only. *Ibid.*, sec. 12.

13. If there shall be no clerk of the town in which such meeting is to be holden, or in case of his absence, the legal voters of such town present shall choose a clerk of the meeting, who shall be sworn, and shall perform the duties by law required of town-clerks in town meetings; shall keep a fair record of all the proceedings of the meeting, and shall transmit the same, duly certified, to the clerk of said town, as soon as one shall be elected, who shall record the same in the book of records of the town wherein such meeting is holden. *Ibid.*, sec. 13. No person can vote for town-clerk except legal voters of the town in which the meeting is holden.

14. If any selectman or town-clerk shall neglect to perform any duty required of him by this chapter, he shall be punished by fine not exceeding fifty dollars. *Ibid.*, sec. 14.

15. The following towns and places, not having the constitutional number of rateable polls each, are hereby classed for the election of representatives to the general court, in the following manner, and each class may send one representative annually, viz.:

Carroll, Nash and Sawyer's Location, Hart's Location and Crawford's Grant;

Jackson and Pinkham's Grant;

Pittsburg, Clarksville, Dixville, Millsfield and Errol;

Franconia and Lincoln;

Berlin, Gorham and Shelburne;

Randolph and Jefferson;

Northumberland and Stratford;

Milan, Stark and Dummer;

Danville and Sandown ;  
 Bennington and Windsor ;  
 Albany and Chatham ;  
 Woodstock and Ellsworth.

16. The form of the certificate of election in towns not classed may be thus :

. STATE OF NEW-HAMPSHIRE.

At a legal town meeting, duly notified and holden at Portsmouth, in the county of Rockingham, on the second Tuesday of March, in the year eighteen hundred and forty-three, the alphabetical list of all the inhabitants of said town qualified to vote for senators, having been lodged with the clerk of said town, and posted up at the town-house in said town fifteen days prior to said second Tuesday of March, and the name of each voter having been checked by the town-clerk on said list during the balloting, the votes of the inhabitants of said town, qualified as aforesaid, given in for representatives to represent said town in the general court of said state, were received in the presence of the selectmen, in open town meeting, by the moderator thereof, who, in the presence of said selectmen and of the clerk of said town, sorted and counted the same, and at the close of the poll made a public declaration of the whole number of tickets given in, the name of every person voted for, and the number of votes for each person, which were as follows :

A. B. had six hundred votes.

C. D. had six hundred votes.

The whole number of tickets for representatives given in was .

And the said A. B. and C. D., having a majority of all the tickets given in, were declared by the moderator to be elected representatives of said town for the ensuing year.

R. M., *Town-Clerk.*

A true copy of record. Attest : R. M., *Town-Clerk.*

I hereby certify that the selectmen of said town have filed with the town-clerk thereof, agreeably to the provisions of chapter 25, section 18, of the Revised Statutes, the list of voters used at the annual meeting, with the names of all the rateable polls in said town not included in said list written upon the back thereof. The whole number of voters in said



list is , and the whole number of rateable polls in said list, and upon the back thereof, is

R. M., *Town-Clerk.*

17. In the list of rateable polls is to be included "every male inhabitant, of the age of twenty-one years and upwards;" this embraces aliens, paupers, persons over seventy years of age, persons non compos, and persons who have not acquired a right to vote by residence.

18. The form of a warrant for a meeting for the election of a representative for classed towns may be as follows :

STATE OF NEW-HAMPSHIRE.



*To the inhabitants of the towns of Danville and Sandown, in the county of Rockingham, in said state, qualified to vote for*

*senator :*

You are hereby notified to meet at the meeting-house in said Danville, on Thursday, the sixteenth day of March instant, at nine of the clock in the forenoon, to act upon the following subjects :

1. To choose a moderator to preside in said meeting.
2. To choose a representative to represent said towns in the legislature for the ensuing year.

Given under our hands and seal, at Danville, this first day of March, eighteen hundred and forty-three.

P. G. }  
E. H. } *Selectmen of Danville.*  
N. L. }

19. The form of the selectmen's return on said warrant may be thus :

*Danville, March 16, 1843.* We hereby certify that we posted up an attested copy of the within warrant at the meeting-house in said Danville, and a like attested copy at the tavern of G. R., in said Sandown, being public places in said towns, on the first day of March, 1843. We also on said day lodged with the town-clerk of said Danville an alphabetical list of all the legal voters of said town, and also posted up at said meeting-house a like list, which we believe to be correct.

P. G. }  
E. H. } *Selectmen of Danville.*  
N. L. }

20. The copy of the check list, as corrected by the selectmen, should be certified as such by them, and filed with the town-clerk of the town in which the meeting is to be holden. The attestation may be as follows :

The foregoing list is a true copy of the list of legal voters in the town of S., as corrected by us this day.

H. M.	} <i>Selectmen of S.</i>
L. P.	
G. R.	

S. , *March* 15, 1843.

21. The form of the certificate of election may be as follows:

At a legal meeting of the inhabitants of the towns of Danville and Sandown, qualified to vote for senator, duly notified, holden at Danville, in the county of Rockingham, on the sixteenth day of March, in the year eighteen hundred and forty-three, for the choice of a representative to represent said towns in the legislature of this state, an alphabetical list of all the inhabitants of said Danville, qualified to vote for senator, having been lodged with the clerk of said town, and posted up at the meeting-house in said town fifteen days prior to said sixteenth day of March, and an attested copy of the list of the legal voters in said Sandown, qualified as aforesaid, as corrected by the selectmen of said Sandown, having been filed with the town-clerk of said Danville before the opening of said meeting, and all the names thereon entered upon the list of voters of said Danville, and the name of each voter having been checked by the town-clerk on said list during the balloting, the votes of the inhabitants of said Danville and Sandown, qualified as aforesaid, given in for a representative to represent said towns in the general court of said state were received—(Here copy the form of a certificate for a town not classed, after the words "*were received.*")

The certificate should state the number of voters, and the number of polls in *each* of the classed towns.

22. The form of the certificate, where no choice is effected on the first day, may be thus. Copy the form before given, down to the words, "And the said A. B. and C. D. having a majority," &c., &c., which are to be omitted, and insert instead :

And no person having a majority of all the tickets given in, it was declared by the moderator that there was no

choice : Whereupon it was *Voted*, that this meeting stand adjourned until to-morrow morning at nine o'clock, and it was adjourned accordingly.

And at the time and place of adjournment aforesaid, the inhabitants of said town being met for the purpose of filling such vacancy, the name of each voter having been checked by the town-clerk on said list of voters during the balloting, (Here copy the rest of the other form.)

## CHAPTER 16.

### GENERAL PROVISIONS CONCERNING ELECTIONS.

- |   |   |
|---|---|
| 1. Neglect to return votes, how prosecuted.                   | 8. Money lost may be recovered.                           |
| 2. Penalties, how recovered.                                  | 9. Fees for return of votes.                              |
| 3. Limitation of prosecutions.                                | 10. Penalty for making any false record, copy or return.  |
| 4. Town-clerk maybe required to correct his record or return. | 11. Blanks to be furnished.                               |
| 5. Penalty for neglect to amend.                              | 12. Records and copies to be signed by recording officer. |
| 6. Penalty for betting on election.                           | 13. Oath of office essential.                             |
| 7. What is a bet or wager.                                    | 14. Voters not liable to arrest.                          |

1. The secretary of state shall, within thirty days after any default in the return of votes, certify the same to the solicitor of the county, which certificate shall be *prima facie* evidence of such default, and the solicitor shall prosecute every person guilty of such default. *R. S., ch. 30, sec. 1.*

2. All fines and penalties accruing under the seven preceding chapters, for any default or offence, may be recovered by indictment or information, and shall be appropriated one half to the use of the prosecutor, and the other half to the use of the county. *Ibid., sec. 2.*

3. No prosecution shall be sustained unless commenced within one year after the commission of the offence. *Ibid., sec. 3.*

4. If the clerk of any town or place shall make an incorrect or insufficient record or return, of the votes given

therein at any meeting for any of the officers aforesaid, the tribunal by whom said votes are opened and counted may require said clerk, at his own expense, to come in and amend said record or return, according to the facts of the case. *Ibid.*, sec. 4.

5. If any clerk shall neglect or refuse to appear and amend as aforesaid, he shall be punished by a fine of fifty dollars, to be recovered by indictment or information in the county in which such delinquent resides. *Ibid.*, sec. 5.

6. If any person shall make or accept any bet or wager of money, goods, or property of any kind whatever, upon any election for any public officer, or upon the event or result of such election, or upon any of the proceedings thereof; or if any person shall receive any money, goods, or other thing, the same having been won upon any such bet or wager, he shall forfeit and pay a sum equal to double the amount of the money or value of the goods or property so received, bet or wagered, to the use of the person who first sues therefor. *Ibid.*, sec. 6.

7. Any contract or agreement made or entered into for the purchase, sale, loan, or use of any money, or property, real or personal, the terms of which are made to depend upon, or are to be varied or affected by, any such election, or by the event or result thereof, or of any of the proceedings thereof, shall be deemed to be a bet or wager within the meaning of this chapter. *Ibid.*, sec. 7.

8. If any person shall receive any money or property, won by him upon any bet or wager as aforesaid, he shall be liable therefor to the person losing the same, in an action of assumpsit, trover, or other form proper to recover the same. *Ibid.*, sec. 8.

9. The fees of sheriffs for the return of votes to the secretary of state shall be ten cents per mile travel each way from the place of their residence to the capitol in Concord, estimating toll-bridges as three miles travel each, but allowing only one travel for all returns made annually; and the secretary, on proper evidence thereof, may pay the same, and present his account thereof to the governor, who shall, by and with the advice and consent of the council, draw his warrant on the treasurer therefor. *Ibid.*, sec. 9.

10. If the clerk of any town or place shall willfully and corruptly make a false record of any vote or other proceeding in any legal town meeting, or any false copy of any re-

cord, or any false certificate or return of votes, he shall be punished by solitary imprisonment not exceeding six months, and by confinement to hard labor not less than two nor more than five years. *R. S., ch. 217, sec. 18.*

11. The secretary of state shall prepare and distribute to every town, blanks for the returns of state and county officers, representatives in congress and electors, which shall be used by town-clerks in making returns. They will be sent to the office of the register of deeds for the county. *R. S., ch. 11, secs. 2 and 3.*

12. Every record or return, and every copy of either, made by the town-clerk, or by any recording officer, should be signed by him ; a record not signed is of no avail.

13. No person, chosen or appointed to any public office under any law of this state, shall exercise such office, or shall perform any act therein, until he shall have taken the oath of office therefor. *R. S., ch. 15, sec. 4.*

An *affirmation* may be administered instead of an oath.

14. No person entitled to vote at any town meeting shall be liable to arrest on civil process on the day on which such meeting is held. *R. S., ch. 185, sec. 2.*





## TITLE III.

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### OF THE ASSESSMENT AND COLLECTION OF TAXES.

- CHAPTER 17. Of persons and property liable to taxation.  
CHAPTER 18. Where and to whom persons and property shall be taxed.  
CHAPTER 19. Of the annual invoice of polls and taxable property.  
CHAPTER 20. Of the appraisal of taxable property.  
CHAPTER 21. Of the assessment of taxes.  
CHAPTER 22. Of the abatement of taxes.  
CHAPTER 23. Of the collection of taxes of residents.  
CHAPTER 24. Of the collection of taxes of non-residents.  
CHAPTER 25. Of the state and county tax, and the surplus revenue.  
CHAPTER 26. General provisions concerning the assessment and collection of taxes.  
CHAPTER 27. Of extents.
- 

### CHAPTER 17.

#### OF PERSONS AND PROPERTY LIABLE TO TAXATION.

- |                                      |                                     |
|--------------------------------------|-------------------------------------|
| 1. Polls, when taxable.              | VI. Horses, asses and mules ;       |
| 2. Real estate, when taxable.        | VII. Neat cattle ;                  |
| 3. Personal estate, when taxable:    | VIII. Sheep.                        |
| I. Stock in public funds ;           | 4. Rail roads, how taxed.           |
| II. Stock in corporations ;          | 5. Tax, how distributed.            |
| III. Money on hand and at interest ; | 6. Stockholders, list of furnished. |
| IV. Stock in trade ;                 | 7. Rules for taxation.              |
| V. Carriages ;                       | 8. " Insane," meaning of word.      |
|                                      | 9. " Stockholders," evidence of.    |

1. All male polls, from 21 to 70 years of age, are liable

to be taxed, except paupers and insane persons. *R. S., ch. 39, sec. 1.*

2. All real estate, [except houses of public worship, school houses and seminaries of learning, and property of the state and county,] whether improved or unimproved, and whether owned by residents or others, is liable to be taxed; buildings, mills, carding machines, factory buildings and machinery, wharves, ferries, toll-bridges, locks and canals, shall, for the purposes of taxation, be deemed real estate. *Ib., sec. 2.*

3. Personal property liable to be taxed is:

I. Stock in public funds;

II. Stock in all corporations in this state except manufacturing and rail-road corporations, and stock in any corporation out of the state, if not there assessed; provided a dividend or income is or may be derived from said stock, and notwithstanding said stock is mortgaged, pledged, or otherwise conveyed as security;

III. Money on hand or at interest, more than the owner pays interest for; including money deposited in any bank or savings institution, or loaned on any mortgage, pledge, obligation, note or other security whatever, whether on interest, or interest be paid or reserved in advance;

IV. Stock in trade, whether of merchants or shopkeepers, mechanics or tradesmen, employed in their trade or business, reckoning the same at the average value thereof for the year; all raw materials and manufactures of any manufactory, and all wood, timber, logs and lumber, manufactured or otherwise, exceeding fifty dollars in value, shall, for the purpose of taxation, be deemed stock in trade;

V. All carriages exceeding fifty dollars in value;

VI. All horses, asses and mules, over eighteen months old;

VII. All oxen, cows and other neat stock, over eighteen months old;

VIII. All sheep over six months old. *Ibid., sec. 3.*

4. Every rail-road corporation shall pay into the treasury of the state, on or before the second Wednesday of June annually, one per cent. on the value on the first day of January preceding, of that part of its capital stock expended within this state, to be determined by the certificate of the justices of the superior court. *Ibid., sec. 4.*

5. The treasurer of said state shall assign and distribute, in the month of June annually, all sums so received by him, in the following manner :

I. To the several towns in which any rail-road may be located, one fourth of said one per cent. paid by said rail-road corporation ; each town to receive in proportion to the capital stock expended therein for buildings and the right of way ;

II. To the several towns in which stock in any rail-road shall have been owned on the first day of the April next preceding, three fourths of the one per cent. paid by said corporation on the stock owned in such town, on receiving from the selectmen thereof satisfactory evidence that the same was owned in said town on said first day of April ; said three fourths of one per cent. to be, by the selectmen of the town receiving the same, appropriated in just proportion to the several purposes for which taxes are assessed upon the polls and estates of such stockholders in such town ;

III. The remainder for the use of the state.

6. It shall be the duty of the agent of every such rail-road corporation to transmit to the treasurer of the state, on or before the first day of June annually, a certified statement of the number of shares in such corporation owned in each town in this state on the first day of April annually, and by whom owned, and such other information as may be required to carry out the provisions of this and the two preceding sections. *Ibid.*, sec. 6.

7. Property in this state is taxed specifically ; therefore no property is liable to be taxed, unless it is included in the foregoing classes. This chapter states merely *what* property is taxable ; the next states *where* and to *whom* it is taxable.

8. The word "insane" includes an idiot, a non compos, lunatic or distracted person. *R. S.*, ch. 1, sec. 15.

9. The certificate of the agent of the rail-road corporation, required by section 6, will probably be "satisfactory evidence" to the state treasurer, under section 5, for the payment from the state treasury of the proportion due to the several towns on stock owned therein, except where it is pledged or conveyed as security, in which cases the affidavit of the parties may be required.

## CHAPTER 18.

WHERE AND TO WHOM PERSONS AND PROPERTY  
SHALL BE TAXED.

- |  |  |
|--|--|
| 1. Inhabitants, who are deemed.                              | 13. Persons believed to be inhabitants to be assessed.       |
| 2. Students at literary institutions.                        | 14. When taxes of such to be abated.                         |
| 3. Persons removing from town.                               | 15. Lien and remedy of persons taxed for property of others. |
| 4. Stock in corporations.                                    | 16. Keeper of stud-horse to give security for tax.           |
| 5. Property of manufacturing and other corporations.         | 17. Penalty for refusal.                                     |
| 6. Animals and stock in trade kept in any town, there taxed. | 18. General rules for taxation.                              |
| 7. Property taxed to the person in possession.               | 19. "Real estate," where taxed.                              |
| 8. Person in possession refusing, how taxed.                 | 20. Rail-road corporations, how taxed.                       |
| 9. If no one in possession, how taxed.                       | 21. Manufacturing companies, how taxed.                      |
| 10. Unimproved lands of non-residents.                       | 22. "Stock" in Massachusetts, how taxed.                     |
| 11. Estates of persons deceased.                             | 23. "Toll bridges," how taxed.                               |
| 12. Estates of wards, and trust funds.                       | 24. Shares, when to be taxed.                                |
|  | 25. "Inhabitant," who is such.                               |

1. Every person shall be taxed in the town, in which he is an inhabitant or resident on the first day of April, for his poll and estate, except in cases otherwise provided for by law. *R. S., ch. 40, sec. 1.* The word "inhabitant" may be construed to mean a resident, or person *dwelling* and *having his home*. *R. S., ch. 1, sec. 5.* For a fuller explanation of its meaning, see ante, *ch. 9.*

2. Residence in any town merely for the purpose of obtaining an education at any literary institution, shall not subject the person so residing to taxation in such town. *Ibid., sec. 2.* But if he had a former residence in such town, or has removed and taken up his permanent residence therein, he is not exempted. See *ch. 9, sec. 6.*

3. In case any person shall remove from town on or after the first day of April, he shall pay his taxes that year in the town from which he removed. *Ibid., sec. 3.*

4. Stock in banks, insurance and other corporations, except rail-road and manufacturing corporations in this



state, shall be taxed to the owner thereof, in the town in which he resides, if in this state; otherwise to the corporation in the town in which its principal office or place of business in the state shall be kept. *Ibid.*, sec. 4. To know what stocks are to be taxed, see *ch. 17, sec. 3, clause 2*. For the mode of appraisal, see *ch. 20, sec. 1*.

5. Taxable property of manufacturing corporations in this state, and property taxable to any other corporation, shall be taxed to such corporation by its corporate name, in the town or place in which it is situate, except in cases where other provision is made. *Ibid.*, sec. 5.

6. All animals liable to be taxed kept in any town, and all stock in trade employed in any town, owned by any person not resident therein, shall be taxed in such town, to the owner or person having the care thereof on the first day of April, whether such person be a resident in town or not. *Ibid.*, sec. 6. To know what is included in "stock in trade," see *ch. 17, sec. 3, clause 4*.

7. All real and personal property shall be taxed to the person claiming the same, or to the person who is in the possession and actual occupancy thereof, provided such person will consent to be taxed for the same; but such real estate shall be taxed in the town in which it is situate. *Ibid.*, sec. 7. As to what is included in "real estate," see *ch. 17, sec. 2*.

8. If any person, not the owner, shall be living on any farm, or in any house, on the first day of April, and shall refuse to be taxed for it, the same shall be taxed as resident by the number of the lot, or such other description as it is commonly known by, with the name of the occupant, as such; and all property so taxed shall be holden and liable to be sold in the same manner that the real estate of residents is holden and sold for taxes.

9. If no person shall be in possession or occupation of any buildings deemed by the selectmen to be tenantable, or of any other real estate improved as pasture, mowing, arable or otherwise, the same shall be taxed as non-resident by such description as it may be readily known by, with the name of the owner, if known. *Ibid.*, sec. 9.

10. Unimproved lands of non-residents shall be taxed in the name of the owner, if known; otherwise in the name of the original proprietor, if known; otherwise without any name, and by the number of lot and range, if lotted, and

the quantity thereof, or by such other description as it may be readily known by. *Ibid.*, sec. 10.

11. Estates of persons deceased may be taxed to the widow, any of the children, heirs or other person, who will consent to be considered as in possession thereof; otherwise to the heirs generally of such deceased person. *Ibid.*, sec.

11. By "consent" is understood an agreement that the property may be so taxed. Without such agreement it should be taxed '*To the Heirs of A. B., deceased.*'

12. The real and personal estate of any legatee or ward, and all taxable property held in trust, shall be assessed to the administrator, trustee or guardian, or other person holding such property in trust; the real estate in the town in which it is situate, and the personal estate in the town in which such administrator, trustee or guardian may reside, if in the state; otherwise in the town in which such legatee, ward, or person beneficially interested shall reside; provided, however, that stock and all goods and chattels shall be taxed in the town in which they are kept. *Ibid.*, sec. 12. Such property is in all cases to be taxed to the administrator, guardian or person holding the same in trust; if he lives within the state, the personal property is to be taxed to him in the town in which he lives; if he lives out of the state, it is to be taxed to him in the town in which the legatee, ward or person beneficially interested lives. By "reside," is probably meant, *has his dwelling place or home.* By "stock and all goods and chattels," is probably meant "animals," and "stock in trade," specified in sec. 6, of this chapter.

13. The selectmen shall assess all persons whom they believe to be inhabitants of the town on the first day of April. If any person so assessed shall tender to the selectmen his affidavit, stating that before the first day of April he had removed from said town, and become an inhabitant of any other specified place, and answer such interrogatories under oath as the selectmen may propose relative to his residence, they may suspend the collection of such tax. *Ibid.*, sec. 13. As to who are inhabitants, see sec. 1, of this chapter.

14. If the person so assessed and examined shall, within one year from said first day of April, produce to said selectmen the certificate, under oath, of the selectmen of any other town, that he was assessed in that town as an inhabitant, and how much, and has paid the tax, and that the same is the legal tax for the year upon his poll and whole

estate, the first mentioned tax may be abated, otherwise it shall be collected. *Ibid.*, sec. 14. If the assessment was illegal, the selectmen would nevertheless be liable; but they may abate the tax in any case. *Ch. 22, sec. 1.*

The form of the selectmen's certificate may be as follows:

*To whom it may concern:* This certifies that A. B. was, in our opinion, a legal inhabitant of the town of C., in the county of R., on the first day of April, A. D., 1843; that he was assessed in said town as an inhabitant in the sum of        dollars,        cents; that said sum is the legal tax for the year upon the poll and whole estate of said A. B., and that he has paid the same.

G. H.,  
L. P.,  
N. O., } *Selectmen of C.*

R       , ss., *May 1, 1843.* Then personally appeared the said G. H., L. P. and N. O., selectmen of the town of C., and severally made oath that the foregoing certificate by them signed is in their belief true. Before me,

P. D., *Justice of the Peace.*

15. Any person or corporation to whom any tax may be legally assessed upon the property of any other person or corporation, shall have a lien upon such property, and the income or dividends thereof, until such tax is repaid to them; shall be allowed the same upon settlement of their accounts, and shall have a right to recover the same against the owner by action for money paid to his use. *Ibid.*, sec. 15.

16. The selectmen shall appraise and assess, in all taxes of the year, every stud horse or ass which shall be kept in the town for the use of mares at any time after the first day of April, and may require the owner, or person having the care of such animal, to give security, to their satisfaction, to pay such taxes, or produce satisfactory proof, within thirty days, that such animal has been duly taxed in some other town in this state. *Ibid.*, sec. 16. This may be done after the taxes are made, and a warrant therefor issued to the collector.

17. If the owner, or person having the care of such horse or ass, shall neglect or refuse to give such security upon request, he shall forfeit three times the amount of the tax so assessed, for the use of the town. *Ibid.*, sec. 17.

18. This chapter provides for the *place where* and the *per-*

sons to whom property is to be taxed; the preceding chapter states *what property* is liable to be taxed, and no property is to be taxed unless expressly mentioned in that chapter as taxable. For the *mode of appraisal*, see ch. 20.

19. Real estate, when liable to be taxed at all, is in all cases to be taxed in the town in which it is situate.

20. Rail-road corporations, lying in this state, paying one per cent. into the state treasury, no property owned by them, nor any stock therein, is liable to be taxed again. Stock in rail-roads lying out of the state, if owned by inhabitants of this state, is liable to be taxed, if not assessed in the state in which such road lies.

21. Manufacturing corporations in this state are taxed for all their property, either as "real estate" or "stock in trade." *Ch. 17, secs. 2, 3.* Stock in such corporations is not, therefore, to be taxed. *Ibid., sec. 3.* But stock in manufacturing companies, situate out of the state, owned by inhabitants of this state, is taxable here if not assessed there.

22. "Stock in all monied corporations" in Massachusetts is there liable to taxation. *Mass. R. S., ch. 7, sec. 4.*

23. Toll bridges belonging to a corporation are to be taxed to the corporation. *8 N. H. R., 207.* And toll bridges across Connecticut river are taxable in this state. *Ibid.*

24. When the property of a corporation is taxed to the corporation, the shares in such corporation are not liable to be taxed to the stockholders. *8 N. H. R., 209.*

25. If a person, having his home in a town, leaves for health or business for an uncertain time, intending to return and take up his abode, he is liable to be taxed for his person and estate in such town, though he was absent sixteen months and his family twenty-five months. *1 Metcalf R., 252.* But not, if he left town without such intention to return. *1 Metcalf R., 246.*



## CHAPTER 19.

## OF THE ANNUAL INVOICE OF POLLS AND TAXABLE PROPERTY.

- |                                  |                                   |
|----------------------------------|-----------------------------------|
| 1. Invoice to be taken in April. | 7. Agents of corporations to give |
| 2. Selectmen to give notice.     | account of taxable property.      |
| 3. Or make personal application. | 8. Doomage, in case of neglect.   |
| 4. Account to be exhibited on    | 9. Agents of corporations to give |
| oath.                            | list of shares and deposits.      |
| 5. Doomage, in case of neglect.  | 10. Penalty for neglect.          |
| 6. Wilful omission, penalty.     |                                   |

1. The selectmen of each town shall annually, in the month of April, take an invoice of all the polls and property liable to be taxed in such town on the first day of the same month. *R. S., ch. 41, sec. 1.*

2. The selectmen may seasonably give notice of the time and place appointed by them to receive an account of the polls and taxable property in such town, by posting up advertisements at some public place or places in such town, or in any other manner the town may at any legal meeting direct. *Ibid., sec. 2.*

The form of such notice may be thus :

*To the Inhabitants of the town of D., and persons liable to be assessed therein.*

You are hereby notified that the subscribers will be in session at the house of C. D., in said town, on Monday the first, Tuesday the second, and Saturday the sixth of April next, from eight o'clock, A. M., to six o'clock, P. M., of each day, for the purpose of receiving an account of the polls and taxable property in such town, which account you are required to render.

Given under our hands, this twentieth day of March, 1843.

N. P. }  
L. B. } *Selectmen of D.*  
C. T. }

3. The selectmen, or either of them, may make personal application to the respective inhabitants of the town, to any person having the care of personal property taxable therein,



and to the officers of any corporation, for an account of the polls and rateable estate for which they are liable to be taxed. *Ibid.*, sec. 3.

4. All persons liable to be taxed in such town, shall exhibit to the selectmen, at the time and place appointed by them, or upon such personal application, a true account of the polls and estate for which they are there taxable, either in their own right or otherwise, on oath if required by either of the selectmen, which oath either of the selectmen may administer. *Ibid.*, sec. 4.

The account given in should be taken down in writing by the selectmen, and an oath administered as follows:

“You solemnly swear that the account which you have now given in, is a true and perfect account of all the polls and estate for which you are liable to be taxed in this town, either in your own right or otherwise. So HELP YOU GOD.”

5. If any person shall neglect or refuse, after due notice given as aforesaid, or when called upon by any selectman, to give such account, the selectmen shall set down to such person, by way of doomage, as much as they judge equitable, which shall be conclusive in all cases, unless the party shall shew, by his statement under oath, that it was not in his power to exhibit such statement. *Ibid.*, sec. 5. This applies to the case where the party neglects or refuses to exhibit any account of his taxable property, or to make oath.

6. If any person, in giving to the selectmen such account, shall wilfully omit any part of the estate for which he is taxable, the selectmen may, upon discovery of the fraud, assess such person in all taxes of that year four times as much as such estate, if given in, would be legally taxable. *Ibid.*, sec. 6. This applies to the case where the party gives in an account, but intentionally omits a part of his taxable property.

7. The cashier, treasurer, agent or other principal officer of every bank, savings institution, insurance company, railroad or other corporation, shall, on application in person or by writing by any selectman, furnish at the principal place of business of such corporation, an account in writing, on oath if required, of all the rateable estate of such corporation, and a like account of all shares and deposits therein, which are owned by any person resident or corporation established out of the state, within four days after such application. *Ibid.*, sec. 7.

8. If such officer of any corporation as aforesaid shall neglect or refuse, upon application, to give such account of its rateable estate, such corporation may be doomed in the same manner as individuals; and if any such property shall be wilfully omitted in such account, such corporation may be assessed fourfold therefor, in the same manner as individuals are liable. *Ibid.*, sec. 8.

9. The cashier or other principal officer of every bank or other corporation as aforesaid, shall, upon such application, furnish a like account of all shares or deposits therein, owned by any inhabitant of the town of which the person applying is selectman, and the value thereof, whether mortgaged or pledged, or not, within four days after such application is made. *Ibid.*, sec. 9.

10. If any such officer shall wilfully neglect or refuse to furnish as aforesaid any such account as is required by this chapter, he shall forfeit a sum not less than one hundred nor more than four hundred dollars, for the use of such town. *Ibid.*, sec. 10.



## CHAPTER 20.

### OF THE APPRAISAL OF TAXABLE PROPERTY.

- |                                 |                                  |
|---------------------------------|----------------------------------|
| 1. Selectmen to appraise truly. | 4. Deduction from invoice of in- |
| 2. Several interests and timber | sane persons.                    |
| to be appraised separately.     | 5. Value of shares ascertained.  |
| 3. Manner of making invoice.    | 6. Appraisal made under oath.    |

1. The selectmen shall appraise all taxable property at its full and true value in money, and shall receive and consider all such evidence as may be exhibited to them relative to the value of shares in corporations and other property, the value of which cannot be determined by personal examination. They shall deduct from the appraised value of shares in any corporation, a just proportion of the value of any estate of such corporation which shall be legally taxed elsewhere, upon satisfactory evidence thereof under oath. *R. S.*, ch. 42, sec. 1.

2. Whenever it shall be made to appear to the selectmen that several persons are owners of several interests in the same real estate, or that one person is the owner of land and another is the owner of any building, timber or wood standing thereon, they shall, upon request, appraise such several interests, and assess the same to the several owners thereof separately. *Ibid.*, sec. 2. This is to be done only upon request, and upon satisfactory evidence of such several interests.

3. The selectmen shall set down in their invoice, in separate columns, the value of improved and unimproved land; of buildings, not specially designated; mills and carding machines; factories and their machinery; wharves; ferries; toll-bridges; locks and canals; the value of stocks in public funds; of shares in banks and other corporations; the amount of money on hand, at interest or on deposit; stock in trade; the value of carriages; the number and value of horses, asses and mules; of cows, oxen and other neat stock; and of sheep. *Ibid.*, sec. 3. For form of invoice and rules for taxation, see Appendix.

4. The selectmen shall make such deductions from the appraised value of the property of insane persons as they shall think just and reasonable, whenever it shall appear that the income of their estates is not sufficient to support them. *Ibid.*, sec. 4. In "*insane persons*" are included a non compos, idiotic, lunatic or distracted person. *R. S.*, ch. 1, sec. 15.

5. The taxable value of shares in corporations may be ascertained, by first ascertaining their market value, and also the amount of the estate for which the corporation is taxed, of which the stockholder must furnish "satisfactory evidence," if he claims a deduction. Divide the amount of the corporate estate so taxed by the whole number of shares in the corporation, which will give the proportion for which each share is already taxed. Deduct this amount from the market value of the shares, and the balance will be the value of the shares upon which the tax is to be assessed. The reason is, that otherwise the property would be twice taxed; to the corporation as estate, and to the stockholder as stock.

6. All appraisals of property by selectmen are made under the sanction of their oath of office, which is to "appraise all taxable property at its full and true value in money," although no oath is now required immediately before the appraisal.

## CHAPTER 21.

### OF THE ASSESSMENT OF TAXES.

- |   |                                       |
|---|---------------------------------------|
| 1. Taxes, how assessed.                             | 9. Return to state treasurer, form.   |
| 2. What property exempted.                          | 10. Return to county treasurer, form. |
| 3. Selectmen to assess taxes.                       | 11. Return to town treasurer, form.   |
| 4. Five per cent. to be assessed extra.             | 12. Form of a collector's warrant.    |
| 5. Several taxes may be included in one assessment. | 13. Assessment, when illegal.         |
| 6. Record of invoice and taxes.                     | 14. List and warrant must be signed.  |
| 7. Returns to state and county treasurers.          | 15. Assessment of school tax.         |
| 8. Collector's list and warrant.                    | 16. Assessment of highway tax.        |

1. All taxes for the year following, shall be assessed upon the invoice made as aforesaid, estimating each poll at one dollar and fifty cents, and taxable property at the rate of fifty cents on each hundred dollars of its appraised value. *R. S., ch. 43, sec. 1.*

2. Any town may, at their annual meeting, an article for that purpose being inserted in the warrant, exempt unimproved lands of non-residents from any tax or part thereof. *Ibid., sec. 2.*

3. The selectmen shall seasonably assess all state and county taxes for which they shall have the warrants of the state and county treasurers respectively; all taxes duly voted in their towns, and all school and school-house taxes authorized by law, or by vote of any school district, duly certified to them. *Ibid. sec. 3.*

4. In assessing such taxes the selectmen may assess a sum not exceeding five per cent. more than the amount of such tax, to answer any abatements that may be made, which shall be paid into the town treasury, for the use of the town. *Ibid., sec. 4.*

5. The selectmen may include in one assessment the state, county, town and school taxes, or so many of them as may be found convenient. *Ibid., sec. 5.*

6. A fair record shall be made of every invoice taken by the selectmen, and of all taxes by them assessed, in a book of records of the doings of the selectmen, in their office,



which shall be the property of the town ; and such invoice and assessments, or a copy thereof, shall, prior to the first day of July, be left with the town-clerk, and recorded by him ; and both of said records shall be open to the inspection of all persons. *Ibid.*, sec. 6.

The invoice and tax lists, as recorded by the selectmen, should be certified and signed by them. For form, see Appendix.

7. The selectmen shall seasonably make a return to the state and county treasurers of the names of the collectors of their respective towns, with the date of their warrants, with the amount they are required to pay to such treasurers respectively, and at what times. *Ibid.*, sec. 7.

8. A list of all taxes by them assessed shall be made by the selectmen, under their hands, with a warrant under their hands and seal, directed to the collector of such town, requiring him to collect the same, and to pay over to the state and county treasurer, and to the selectmen or town treasurer, such sums at such times as may be therein prescribed. *Ibid.*, sec. 8.

9. The return to the state treasurer may be thus :

*To the Treasurer of the State of New-Hampshire :*

Agreeably to a warrant by you issued, dated December 1, 1842, we have assessed upon the polls of the inhabitants of the town of \_\_\_\_\_, and upon estate taxable therein, the sum of \_\_\_\_\_ ; and have committed lists thereof to A. B., collector of said town, with warrants bearing date May 1, 1843, directing him to pay said sum to you on or before the first day of July, 1843.

Witness our hands, this first day of June, 1843.

N. D., &c., *Selectmen of* —.

10. The return to the county treasurer may be in the same form, substituting the words *County of* \_\_\_\_\_, instead of "State of New-Hampshire."

11. The selectmen should also give to the town treasurer a certificate of all the taxes which are payable to him by the collector, which may be in form as follows :

*To A. B., treasurer of the town of D.* We have assessed upon the rateable polls and estate in said town the sum of \_\_\_\_\_ dollars, voted by said town to be raised to defray town charges, and have committed to N. P., collector



of said town, a list of said assessment, with a warrant bearing date , requiring him to pay to you the sum of dollars on or before the day of next, and the residue on or before the day of next.

Witness our hands this day of , 184 .

G. H., &c., *Selectmen of* —.

If the highway tax is ordered to be paid in money, after the words "town charges," in the above, should be added—  
*and also the sum of , voted by said town to be raised for the repairs of highways and bridges.*

12. The form of the warrant for the collection of the taxes of inhabitants may be thus :

#### STATE OF NEW-HAMPSHIRE.

SULLIVAN, SS. To JOHN SMITH, *collector of taxes for the town of Cornish, in said county.*



In the name of said state you are directed to levy and collect of the several persons named in the list herewith committed to you the taxes in said list set against their names respectively, the whole amounting to the sum of ; and we further order you to pay the same, when collected, as follows : To the treasurer of said state the sum of , to be paid on or before the day of next ; to the treasurer of the county of Sullivan the sum of , to be paid on or before the day of next ; to the several school districts in said town as follows : No. 1, the sum of dollars ; No. 2, the sum of, &c.,—said sums to be paid to the prudential committees of said districts respectively, one third on or before the day of next, and the remainder on or before the day of next ; and to the treasurer of the said town the remainder of said list, as follows : The sum of , on or before the day of next, and the balance on or before the day of next. The list aforesaid is a correct list of the assessment of the state, county, town and school taxes for the year 1843, upon the rateable polls and estates of the inhabitants of said Cornish, as made by us, the selectmen of said Cornish.

If any person named in said list, after having received from you a written notice of the tax for which he is liable, given to him in person or left at his usual place of abode by you, shall neglect or refuse, for the space of fourteen days,

to pay the same, or if any corporation named in said list, after a like notice, shall neglect or refuse to pay such tax, or if you have reason to believe that any person named in said list is about to remove from town, and such person shall, on demand, neglect or refuse to pay his tax, you are directed to collect the same by distress and sale of the goods of such person or corporation, in the mode prescribed by law; but you are not to distrain the tools or implements of any person necessary for his trade or occupation, nor his arms, nor his utensils of household necessary for upholding life; nor bedding or apparel necessary for him or his family; nor the uniform, arms or equipments of any officer, non-commissioned officer or private. And for want of goods and chattels whereon to make distress, you are directed to take the body of any person refusing or neglecting to pay as aforesaid, and to commit him to the common jail, there to remain until discharged according to law.

If any person shall die, or remove from the town, without having paid the tax aforesaid assessed against him, and shall leave in said town no personal estate on which distress can be made, or in case any person or persons shall neglect or refuse to expose goods and chattels whereon distress may be made, you are directed, within one year from the first day of June next, to sell so much of the real estate of such delinquent as will pay the taxes and incidental charges, and to execute a conveyance of the same in the manner prescribed by law.

Given under our hands and seal, at Cornish, this first day of May, in the year 1843.

G. D.	} <i>Selectmen of Cornish.</i>
H. F.	
R. D.	

If the *highway* tax is directed by the town to be paid in money, the word "*highway*" should be added in said form before "and school." And so also in case of *school house* taxes; after "inhabitant of said Cornish," in the form, add —*and of the school-house tax assessed upon the rateable polls and estate in District No. 3, in said town.*

13. In making an assessment the selectmen should be careful not to exceed the sum voted, and five per cent. in addition; if it does exceed it even a few cents the tax will be illegal, and the selectmen liable. 2 *Greenleaf R.*, 375; 20 *Pick. R.*, 418.

14. The list of assessments must be signed, even if the warrant is upon the same paper, and signed also. 3 *Greenleaf R.*, 220.

15. For the assessment of school taxes, see *Schools*.

16. For the assessment of a highway tax, see *Highways*.

17. For further directions, see *ch.* 26.

## CHAPTER 22.

### OF THE ABATEMENT OF TAXES AND OF DISCOUNTS.

- |                                   |                                |
|-----------------------------------|--------------------------------|
| 1. Selectmen may abate, when.     | 4. Form of notice of discount. |
| 2. Court of common pleas, when.   | 5. Court has power, when.      |
| 3. Discount on tax, when allowed. |                                |

1. Selectmen, for good cause shewn, may abate any tax assessed by them or their predecessors. *R. S., ch. 44, sec. 1.*

2. If they shall neglect or refuse, any person conceiving himself aggrieved, having first complied with the provisions contained in section 4, chapter 19, of this Title, may, within nine months after notice of such tax, and not afterward, apply by petition to the court of common pleas in the same county, who shall make such order thereon as justice may require. *Ibid., sec. 2.*

3. Any town may, by vote at the annual meeting, direct a discount to be made to those persons who shall pay their taxes within such periods as the town may limit; and every person so paying shall be entitled to such discount. *R. S., ch. 45, sec. 17.*

4. Notice of such discount may be given by the selectmen as follows :

The selectmen of the town of B. give notice that they have delivered to A. B., collector of taxes, a correct list of the taxes, together with a warrant in due form of law for collecting the same; and that by a vote of said town, to all

persons who shall voluntarily pay the collector, a discount will be made on their taxes as follows :

To such as pay within 30 days, 1 per cent.

To such as pay within 60 days, 2 per cent.

To such as pay within 120 days, 3 per cent.

I. S., &c., *Selectmen of B.*

*B* , May 1, 1843.

5. Under the former statute of July 7, 1827, the court had no authority to abate, except where property was *over-valued* ; not when a person was taxed for property which he did not possess, or which was not taxable. 2 *N. H. R.*, 238 ; 8 *N. H. R.*, 166 ; but by the Revised Statutes the power of the court seems to be as broad as that of the selectmen.

## CHAPTER 23.

### OF THE COLLECTION OF TAXES OF RESIDENTS.

- |  |  |
|--|--|
| 1. Collector's power.                          | 11. Collector's fees.                              |
| 2. Collector to give notice of taxes.          | 12. Liability of corporations.                     |
| 3. Collector to give notice to corporations.   | 13. Real estate holden.                            |
| 4. Distress on delinquent's goods.             | 14. Notice of sale of real estate.                 |
| 5. Articles exempt from distress.              | 15. Sale of real estate, proceedings.              |
| 6. Notice and sale of goods distrained.        | 16. Town may fix time when notice to be given.     |
| 7. Account of sale to be given to the owner.   | 17. Form of advertisement for distress.            |
| 8. Arrest for taxes.                           | 18. Form of account of sale.                       |
| 9. Copy of warrant, &c., left with jailer.     | 19. Certificate left with jailer.                  |
| 10. Collector's power, where a person removes. | 20. Form of advertisement for sale of real estate. |
|  | 21. Mode of proceeding in sale.                    |
|  | 22. "Real estate," meaning of word.                |

1. Every collector, in the collection of the taxes committed to him to collect, and in the service of his warrant, shall have the powers by law vested in constables in the service

of civil process, which shall continue until all the taxes in his list are collected. *R. S., ch. 45, sec. 1.*

2. The collector shall give notice of such tax to every person taxed, or leave a notice thereof in writing at his usual place of abode, fourteen days at least before he shall distrain therefor, unless in cases where he has reason to believe such person is about to remove from town. *Ibid., sec. 2.*

Such notice may be as follows :

*To A. B.* The taxes assessed against you in the town of \_\_\_\_\_, for the year 184 \_\_\_\_\_, are committed to me for collection, and are as follows: state tax, \$ \_\_\_\_\_; county tax, \$ \_\_\_\_\_; town tax, \$ \_\_\_\_\_; school tax, \$ \_\_\_\_\_.

G. C., *Collector.*

3. The collector shall give the same notice, in writing, of all taxes assessed against any corporation, to the cashier, treasurer or some principal officer of such corporation. *Ibid., sec. 3.*

4. Upon neglect or refusal of any person or corporation to pay the taxes assessed on them, the collector may distrain the goods and chattels of such person or corporation. *Ibid., sec. 4.*

5. No distress shall be made of any person's tools or implements necessary for his trade or occupation; nor of his arms, or utensils of household necessary for upholding life, nor of bedding or apparel necessary for him or his family. *Ibid., sec. 5.* Nor of the uniform, arms and equipments of any officer, non-commissioned officer or private. *R. S., ch. 80, sec. 12.*

6. The collector shall keep the property distrained four days, at the cost of the owner. If the tax, cost and charges are not then paid, he shall post up, in two or more public places in the town where the sale is to be, twenty-four hours before the time of sale, a notice of the place, day and hour of sale, with a particular description of the property to be sold; and at the time and place appointed, which shall be in the town where the distress is made, between the hours of ten in the forenoon and six in the afternoon, and within forty-eight hours after the expiration of said four days, shall sell the same at public auction, to the highest bidder. *Ibid., sec. 6.*

7. A particular account in writing of the taxes of the



delinquent, the collector's fees, and the charges of keeping and sale; and the amount of sale of each article, with the overplus, if any, after deducting said taxes and charges, shall be delivered immediately upon such sale to the owner, or be ready to be delivered to him upon request. *Ibid.*, sec. 7.

8. For want of goods and chattels whereon to make distress, the collector may take the body of any person neglecting or refusing to pay the tax assessed against him, and commit him to the common jail. *Ibid.*, sec. 8.

9. In such case the collector shall give to the jailer an attested copy of his warrant, and thereupon certify the sums such person is taxed in his list, and that he has taken his body for want of goods and chattels whereon to make distress; and the jailer shall receive and detain such person in his custody until he pays such tax, costs of commitment and charges of imprisonment, or be otherwise discharged thereof by due course of law. *Ibid.*, sec. 9.

10. In case of removal from town, or of an assessment upon the personal property of non-residents, the collector may distrain the property, or arrest the body of any person named in his list, wherever such person or his property may be found. *Ibid.*, sec. 10.

11. Collectors shall be entitled to the same fees for the collection of taxes by distress and sale, or for arresting or committing any person to jail, as sheriffs are entitled to receive for like services upon civil process. *Ibid.*, sec. 11.

12. The real and personal property of corporations shall be liable to be taken and sold for taxes in the same manner as the property of individuals; and the franchise of taking toll may be taken and sold for taxes in the same manner as the same may be sold on execution. *Ibid.*, sec. 12.

13. The real estate of every person or corporation, against whom any tax may be assessed, shall be holden for such tax for one year from the first day of June following, and may be sold by the collector in case such person shall die or remove from town, and leave there no personal estate on which distress can be made, or in case such person or corporation shall neglect or refuse to expose goods and chattels whereon distress may be made. *Ibid.*, sec. 13.

14. The collector shall give notice of such sale, by posting up advertisements thereof in two or more public places in the town, at least six weeks before the sale, in which shall

be stated the name of the owner, or of the person to whom the same was taxed, and also the name of the occupant, if any, at the time of posting such notice; the amount of the tax, and the place day, and hour of the sale. *Ibid.*, sec. 14.

15. The powers and duties of the collector, in relation to such sale; the time, place and manner of the same; the powers and duties of the collector and town-clerk, in relation to the proceedings subsequent thereto; the fees of the collector and town-clerk, and the rights of the owner in relation to the redemption thereof, shall be the same as are prescribed by the law relating to the sale of the estates of non-residents. *Ibid.*, sec. 15.

16. Any town may, by vote at the annual meeting, direct the time at which notice shall be given to persons whose taxes shall then be unpaid, of the amount of the same; and if the same shall not be paid, with twenty cents more for such notice, within fourteen days thereafter, the collector may distrain for the same. *Ibid.*, sec. 18.

The notice in such case may be like that of a discount, *ch. 22, sec. 4*, leaving out all after the words, "*a vote of said town,*" and substituting—if the tax of any person or corporation shall not be paid on or before the day of next, said collector is directed to give written notice of the amount of such tax to such delinquent; and if the same, with twenty cents more for such notice, is not paid to him within fourteen days thereafter, he may distrain for the same. B. D., &c., *Selectmen of D.*

D , May 1, 184 .

17. The form of the advertisement for selling property on distress may be as follows:

*Distress for Taxes.*

Taken as a distress for taxes, and will be sold at public auction, for cash, at the store of A. B., in Ossipee, in the county of Carroll, on Thursday, the fifth day of September instant, at one o'clock in the afternoon, one red yearling heifer and six sheep.

GEORGE HOBBS, *Collector.*

Ossipee, September 4, 1843.

18. The form of the account of taxes and sale, to be delivered to the owner, or be ready for delivery when he calls for it, may be thus:

*To John Smith:* The following is an account of your



*Collector's Sale of Real Estate.*

All persons interested in the following tracts of land in the town of Wendell, in the county of Sullivan, are notified that the same are taxed in the tax list committed to the subscriber, who is collector of taxes for said town for the year 1843, as follows:

Name of owner.	Description of land.	Name of occupant.	State tax.	County tax.	Town tax.	School tax.	High-way tax.
A. B.	Bond place.	T. P.	1.10	1.30	2.40	2.80	1.15
N. D.	Woodlot on H. hill.		.40	.47	.87	1.00	.42

And if no person shall appear to discharge said taxes on or before the first day of January next, at two o'clock in the afternoon, I shall then proceed to sell, at the store of Peter Jones in said town, at public auction, so much of said real estate owned by each delinquent respectively, as will be sufficient to discharge said taxes and all incidental charges against such person.

GEORGE HOBBS, *Collector.*

*Wendell, October 1, 1843.*

The affidavit of posting may be as follows:

I, George Hobbs, certify that I posted up a copy of the within advertisement at the store of O. L., in said town, and a like copy at the tavern of P. D., in said town, on the first day of October, 1843, being more than six weeks before said day of sale.

GEORGE HOBBS.

*Sullivan, January 1, 1844.* Then appeared the said George Hobbs, and made oath that the above certificate by him signed is true. Before me,

R. D., *Justice of the Peace.*

21. All the proceedings respecting the sale (except the time and manner of advertising,) are the same as is set forth in the following chapter, in the case of non-resident taxes.

22. For the meaning of "*real estate*," see *ch. 24, sec. 20.*

## CHAPTER 24.

## OF THE COLLECTION OF TAXES OF NON-RESIDENTS.

- |   |   |
|---|---|
| 1. List of non-resident taxes.                            | 14. Collector to leave list of lands redeemed, with town-clerk. |
| 2. Copy given to deputy secretary.                        | 15. Form of collector's deed.                                   |
| 3. Deputy secretary to receive taxes.                     | 16. Non-residents may work out highway tax.                     |
| 4. Deputy secretary to return copy.                       | 17. Collector's fees.   |
| 5. Collector to advertise sale.                           | 18. Collector's fees to be divided.                             |
| 6. Form of advertisement.                                 | 19. Penalty for taking greater fees.                            |
| 7. Advertisement to be posted.                            | 20. Sale of buildings and timber.                               |
| 8. Time and place of sale.                                | 21. Advertisement, form of.                                     |
| 9. Return to town-clerk made.                             | 22. Affidavit of posting, form.                                 |
| 10. Owner may redeem, how.                                | 23. Account of sale, form.                                      |
| 11. Collector to give receipt.                            | 24. What to be done by selectmen.                               |
| 12. Money tendered left with town clerk in certain cases. | 25. What to be done by collector.                               |
| 13. Persons interested may redeem their share.            | 26. Duties of town-clerk.                                       |
|   | 27. Non-resident taxes, how paid.                               |
|   | 28. Collector's deed, when valid                                |

1. A list of the taxes assessed on the real estate of persons not resident in the town, shall be made by the selectmen, under their hands, in which shall be inserted the name of the owner, if known, otherwise the name of the original owner, if known; the number of the lot and range, if lotted, otherwise such description as the land may be readily known by; the number of acres, and the amount of taxes assessed thereon. *R. S., ch. 46, sec. 1.* For the form of such list, see Appendix.

2. Such list shall be delivered to the collector on or before the thirtieth day of May; and the collector shall, on or before the eighth day of the next session of the general court in June, deliver a certified copy of his list to the deputy secretary, who shall certify thereon the time of its receipt. *Ibid., sec. 2.* Said copy should be certified by the collector thus :

The above is a true copy of the list of non-resident taxes in the town of C., in the county of B., for the year 1843, as delivered to me by the selectmen of said town.

G. H., *Collector.*

3. The deputy secretary shall keep such copy at Concord



till the first day of September following, for the inspection of all concerned, and shall receive the tax on any tract, with ten per cent. thereon for his services, and give a receipt therefor. *Ibid.*, sec. 3.

4. The deputy secretary, at any time after the first day of September, on application shall return the said copy to the collector, with a certificate of the taxes by him received, and shall pay to the collector the amount, taking his receipt therefor. *Ibid.*, sec. 4.

5. The collector, after receiving from the deputy secretary said copy and certificate, shall advertise the lands on which the taxes have not been paid, for sale, in the New-Hampshire Patriot and State Gazette, printed at Concord, and also in some newspaper printed in the county where the land is situate, if any—otherwise in some adjacent county. *Ibid.*, sec. 5.

6. The advertisement shall contain the same name, same description of the land taxed, and the amount of tax, which is inserted in the collector's list, and the time and place of the sale; and shall be published three weeks successively, commencing at least eight weeks before the sale. *Ibid.*, sec. 6.

7. A similar advertisement shall be posted up at some public place in the town where the lands lie, during the same period. *Ibid.*, sec. 7.

8. Every such sale shall be at auction, in some public place in the town or place where the land is situate, and between the hours of ten in the forenoon and six in the afternoon; and shall be of so much of the owner's estate as will pay the taxes and incidental charges; but if necessary the sale may be adjourned from day to day, not exceeding three days, by proclamation made at the place of sale within the hours aforesaid. *Ibid.*, sec. 8.

9. The collector shall, within ten days after any sale, deliver to the town-clerk an account of the sales, with the charges of sale, under oath; copies of the newspapers in which the advertisement was published, and the advertisement posted up, with an affidavit that it was so posted up, which shall be kept on file; and the said account, advertisement and affidavit shall be recorded by the town-clerk, and a certified copy of such record shall be competent evidence. *Ibid.*, sec. 9.

10. Every person interested in any land sold as aforesaid, may redeem the same by paying or tendering to the collector or his administrator, or, in his absence, at his usual place of abode, the amount for which the land was sold, with twelve per cent. interest thereon from the sale to the time of such payment or tender. *Ibid.*, sec. 10.

11. Upon such payment or tender the collector or his administrator shall give a receipt therefor, and shall pay over the money so paid or tendered to the purchaser upon demand. *Ibid.*, sec. 11.

12. In case a tender shall be made in the absence of the collector or his administrator, at his house, the party tendering shall, before the time of redemption expires, leave the money so tendered with the town-clerk, for the use of such collector, with a notice of such tender, which shall be forthwith recorded by said town-clerk, who shall give a receipt for the same, and shall be paid by the person making such tender, as his fees, ten per cent. upon the amount so tendered. *Ibid.*, sec. 12.

The form of the notice of tender may be thus :

*To whom it may concern :* This certifies that on the day of \_\_\_\_\_, I tendered at the dwelling-house of A. B., collector of the town of C., being his usual place of abode, the said A. B. being then absent, the sum of \_\_\_\_\_, being the amount for which certain real estate in said C., described thus \_\_\_\_\_, was sold by him for the taxes thereon, with twelve per cent. interest.

C \_\_\_\_\_, June 1, 18 \_\_\_\_.

E. F.

13. Every person interested with others in any lot or tract of land, may pay his proportion of the tax, and the residue only shall be sold ; or he may redeem his share of the land when sold, by paying his proportion of the tax, cost and interest. *Ibid.*, sec. 13.

14. Within ten days after the time of redemption shall expire, the collector shall leave with the town-clerk, to be recorded, a correct list of the lands so redeemed. *Ibid.*, sec. 14.

The form of such list may be thus : "The following is a correct list of the real estate of persons not resident in the town of D., advertised and sold by me for the non-payment of taxes and charges thereon, on the tenth day of February, 1844, and which were redeemed by the payment of said

taxes and charges on or before the tenth day of February, 1845.

Ten acres of the Weld place, sold to Peter Gray for \$4.04.

NOAH PORTER, *Collector*.

15. The collector, if living, otherwise his administrator, shall, at the end of one year from the sale, execute to the purchaser, or his heirs, a deed of the land so sold and not redeemed, which shall be substantially in the following form :

KNOW ALL MEN BY THESE PRESENTS, that I, \_\_\_\_\_, collector of taxes for the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of New-Hampshire, for the year 18\_\_\_\_, by the authority in me vested by the laws of the state, and in consideration of \_\_\_\_\_, to me paid by \_\_\_\_\_, do hereby sell and convey to him, the said \_\_\_\_\_, his heirs and assigns, (here describe the land sold) to have and to hold the said premises, with the appurtenances, to him the said \_\_\_\_\_, his heirs and assigns forever. And I do hereby covenant with said \_\_\_\_\_, that in making sale of the same I have in all things complied with the law, and that I have good right, as far as that right may depend upon the regularity of my own proceedings, to sell and convey the same in manner aforesaid.

In witness whereof I have hereunto set my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_, A. D.

Signed, sealed and delivered

in presence of

*Ibid.*, sec. 15.

16. Every non-resident shall have the right, at any time between the first day of June and the twentieth day of July, to pay any highway tax assessed on his land in labor, under the direction of such surveyor of highways, or other proper person, as the selectmen may designate; and such selectmen or surveyor shall give to such non-resident a certificate of the amount of such labor, which shall be received by the collector and by the town-clerk in payment of such tax. *Ibid.*, sec. 16.

This section does not probably apply to the cases where the highway tax is to be paid *in money*.

17. The fees of collectors shall be as follows: For travel to the deputy secretary, for the copy of his list, thence to the places where the advertisements for the sale are to be printed, and returning home, five cents per mile; for advertising in the newspapers and in town, one dollar; for making the sale, one dollar a day, and the same sum for a clerk;

for each deed made to a purchaser, twenty-five cents; and the sums actually paid the printers, not exceeding one dollar a square for three insertions, shall be a legal charge. *Ibid.*, sec. 17.

18. The collector shall make out an equal proportion of his fees and charges, and of the sums paid to printers, to each lot or tract of land advertised or sold as aforesaid; and no person shall be holden to pay any more costs than his just proportion of those incurred at the time of the payment of his tax. *Ibid.*, sec. 18.

19. If any collector shall demand or take any other or greater fees than are by law allowed for any of the services by him rendered, he shall forfeit five dollars to the person suing therefor. *Ibid.*, sec. 19.

20. Any separate interest in land, and any buildings, timber or wood, standing or growing on land owned by another person, shall be taken to be real estate, within the meaning of this and the preceding chapter. *Ibid.*, sec. 20.

In "real estate" is also included all kinds of property specified in ch. 17, sec. 3.

21. The form of the advertisement may be thus:

#### STATE OF NEW-HAMPSHIRE.

STRAFFORD SS. Notice is hereby given, that so much of the following real estate in the town of Dover, in said county, belonging to persons not resident in said town, as will pay the following taxes assessed upon each tract respectively for the year 1843, with incidental charges, will be sold at public auction, at the store of John Davis, in said Dover, on Wednesday, the tenth day of February next, at ten o'clock in the forenoon, unless prevented by previous payment.

Owners.	Original Owners.	Description.	No. acres.	No. of Lot.	Range.	Division.	State Tax.	County Tax.	Town Tax.	School Tax.	Highway Tax.
A. B.		Weld place.	100				10	10	40	30	23
N. P.	H. L.		50	3	2	1	5	5	20	15	11

NOAH PORTER, *Collector.*

*Dover, December 1, 1843.*

The description of the lands taxed and the tax itself should correspond with the collector's lists. If the owners are known, or the original owners unknown, the second



column may be omitted. If the number of lot, range and division are unknown, those columns may be omitted. Sometimes the valuation is inserted. If two or more of the above classes of taxes are included in one assessment, the heading of the column should correspond.

22. The affidavit of posting up may be as follows :

*Dover, February 10, 1844.* I certify that on the first day of December last I posted up the within advertisement at the tavern of S. D., in said Dover, and that the same remained so posted up until the day of sale herein mentioned. I also caused a copy of said advertisement to be published in the New-Hampshire Patriot and State Gazette, printed at Concord, and also in the Dover Gazette, printed at said Dover, three weeks successively, the first publication in each case being more than eight weeks before said day of sale.

NOAH PORTER, *Collector.*

STRAFFORD SS., *February 10, 1844.* Then appeared the said Noah Porter, and made oath that the above affidavit by him signed is in his belief true. Before me,

J. P. H., *Justice of the Peace.*

23. The account of the sale delivered to the town-clerk, may be thus :

The following is a true account of the sales of the real estate of persons not resident in the town of Dover, for taxes assessed upon the same in said town for the year 1843, and which were sold pursuant to notice, at public auction, at the store of John Davis, in said Dover on the tenth day of February, 1844.

Ten acres of the Weld place, bounded thus; [here describe the land sold]—was sold to Peter Gray, he being the highest bidder, for \$4.04, to pay the taxes assessed on said Weld place, amounting to \$1.13, and incidental charges amounting to \$2.91, being in the whole \$4.04.

NOAH PORTER, *Collector.*

STRAFFORD SS., *February 10, 1844.* Then the said Noah Porter appeared, and made oath that the foregoing account by him signed is true. Before me,

J. P. H., *Justice of the Peace.*

24. In order to render the sale legal, the following steps especially should be carefully taken by the selectmen :

I. They must make out a list in writing, signed by them,



of the taxes assessed upon the real estate of persons not resident in the town ;

II. This list must state the name of the owner, if known ; but if not known, the name of the original owner, if known ; if not known, it is better to write in the columns, "*unknown*," though not necessary. 6 *N. H. R.*, 192. If known and omitted, the list is void. *Ibid.*

III. The list should state the number of the lot, range and division, if lotted ; if not lotted, such description as the land may be readily known by. If the owner's name is known and stated, there must be also a description of the land. 3 *N. H. R.*, 103.

IV. It must state the number of acres and the amount of taxes ;

V. Each tract should be described and taxed separately. 3 *N. H. R.*, 105.

VI. The list must be delivered to the collector on or before the thirtieth day of May, or the proceedings will be illegal. 6 *N. H. R.*, 192.

VII. The original invoice and list of assessments, or a certified copy, must be left with the town-clerk on or before the first day of July, and recorded by him. *Ch. 21, sec. 6* ; 6 *N. H. R.*, 192.

25. The following steps must be taken by the collector :

I. He must give bond to the town, to the acceptance of the selectmen, for the faithful discharge of his duties. *R. S., ch. 36, sec. 4.*

II. He must deliver to the deputy secretary of state, on or before the eighth day of the session of the general court in June of the same year, a copy of such list, certified and signed by him ;

III. This list must remain with the deputy secretary until the second day of September, when the collector may call for and receive the same ;

IV. After receiving such copy the collector may advertise the real estate on which the taxes are not paid, as provided in sec. 5. If he advertises before receiving such copy, the sale will be void. 3 *N. H. R.*, 36.

V. He shall post up a copy of the advertisement, as provided in sec. 7.

VI. The advertisement shall contain the same description of the land and taxes which is in his list, and the time and place of sale ;

VII. The sale shall be at auction, in some public place in the town in which the land lies, between 10, A. M., and 6, P. M., and within one year from the first day of June next after the tax is assessed ;

VIII. The advertisement shall be—So much of the owner's estate in each tract as will pay the taxes and incidental charges thereon, unless prevented by previous payment ;

IX. The first publication in the newspapers, and the first posting up must be at least eight weeks before the day of sale ;

X. If an adjournment is necessary, it should be by proclamation made at time and place of sale, for one day at a time only, and not exceeding three days in the whole ;

XI. The property must be sold to the highest bidder, and the record must so appear. 6 *N. H. R.*, 192.

XII. Each tract shall be sold separately, and the sale shall be of so much of each as will pay the taxes and charges thereon. 3 *N. H. R.*, 106.

XIII. An account of the quantity of each tract sold, the price for which sold, the taxes and expenses of sale thereon, a copy of each number of each newspaper in which the advertisement was published, and the advertisement posted up, with an affidavit on it of the time and place of posting, shall be filed with the town-clerk within ten days after the sale ;

XIV. The expenses are to be divided among all the tracts advertised equally ;

XV. The collector, before or after the sale, shall receive of any person the tax and charges on any tract, or on his interest or share in any tract, and give a receipt therefor ; and the residue only shall be sold or foreclosed ;

XVI. The owner may redeem any tract, or any interest therein, within one year next after the day of sale ;—that is, on or before the same day of the same month in the next year ; and the collector, within ten days after the day of redemption expires, shall leave a list of all the lands so redeemed, with the town-clerk, who shall record the same ;

XVII. After the expiration of one year from the day of sale the collector shall execute to the purchaser or his heirs, (not to any other person) a deed of so much of the land sold as is not redeemed according to law.

26. The town-clerk shall carefully preserve and keep on file the account, newspapers, advertisement and affidavit,

and shall record the advertisement, affidavit and account in the record book of the town, attested thus: A true copy of the original: Attest: N. G., *Town-Clerk*.

Before the revision of the statutes, *recording* was not necessary. 9 *N. H. R.*, 169.

27. Non-resident taxes are a charge upon the property taxed, and cannot be collected of the owner in any way except by sale of the property. 1 *Mass. R.*, 47.

28. A collector's deed, describing "a certain tract of land, being part of lot No. 300, containing two hundred and fifty acres," is void for uncertainty. The land should be described by metes and bounds, or other clear description. 1 *N. H. R.*, 93.

29. For further directions and rules, see ch. 26.

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## CHAPTER 25.

### OF THE STATE AND COUNTY TAX AND THE SURPLUS REVENUE.

- |                               |  |                         |
|-------------------------------|--|-------------------------|
| 1. State tax, how collected.  |  | 3. Surplus revenue.     |
| 2. County tax, how collected. |  | 4. Duties of selectmen. |

1. The treasurer of the state shall issue his warrant to each town, stating the proportion of the state tax to be paid by that town, and the time when it is to be paid. If not paid accordingly, an extent against the selectmen or collector may be issued. *R. S.*, ch. 10, secs. 2, 3.

2. The county tax is voted by the representatives of the several towns in the county, assembled at Concord in June. When any such tax is voted, or when an execution against the county is due, the county treasurer apportions the tax among the several towns, and issues his warrant, stating the amount of the tax, and the time when to be paid. If not paid accordingly, an extent may be issued therefor. *R. S.*, ch. 23, secs. 2, 4, 5.

3. Each town is liable to repay to the state the share of the surplus revenue received by such town; and for a neglect to repay, an extent may be issued. The shares of unincorporated places and towns refusing to receive, are loaned by the state treasurer for the use of such towns or places, and the interest paid over. *R. S., ch. 8, secs. 1, 2, 3, 4, 5, 6.*

4. Whenever any such warrant is issued by the state or county treasurer, the selectmen shall assess and collect the same as provided in the preceding chapters, or an extent may issue, as provided in chapter 27.

## CHAPTER 26.

### GENERAL PROVISIONS CONCERNING THE ASSESSMENT AND COLLECTION OF TAXES.

- |                                     |  |
|-------------------------------------|--|
| 1. Liability of collector limited.  | 13. Grant of taxes, how proved.        |
| 2. Collector may appoint deputies.  | 14. Taxation of property, rule.        |
| 3. Taxes are preferred claims.      | 15. Name of person or corporation.     |
| 4. What is a "public place."        | 16. Evidence of appointment, what.     |
| 5. Vote to raise money, when legal. | 17. Computation of time.               |
| 6. Collector's sale, when valid.    | 18. Arrest, when legally made.         |
| 7. Property, if owned in common.    | 19. Collector's authority out of town. |
| 8. Assessment, when illegal.        | 20. Legality of tax, how settled.      |
| 9. Vote to raise money, when legal. | 21. Unincorporated places.             |
| 10. Power of doomsage.              | 22. Vote of money, when legal.         |
| 11. "Wilful omission" of property.  | 23. If tax illegal, selectmen liable.  |
| 12. Collector must take oath.       | 24. Collector must give bond.          |
|                                     | 25. Collector may resign, when.        |

1. No person, to whom any list of taxes shall be committed for collection, shall be liable to any suit or action by reason of any irregularity or illegality of the proceedings of the town or of the selectmen, nor for any cause whatever except his own official misconduct. *R. S., ch. 45, sec. 16.*

2. Any collector, being authorized by vote of the town, may appoint deputies, who shall be sworn, shall give bond to the satisfaction of the selectmen, and shall have the powers of collectors, and may be removed at the pleasure of the collector. *Ibid.*, sec. 19.

3. Taxes against an insolvent estate are preferred claims, but must be presented to the commissioner on the estate seasonably. *R. S.*, ch. 162, sec. 18.

4. A shoe-maker's shop is not a "public place," nor any mechanic's shop; but houses of public worship, (in use,) taverns and stores, in many cases are "public places." *3 N. H. R.*, 178. And the place must continue to be a "public" one during the time which the advertisement is required to be posted up. *Ibid.*

5. A vote by a town "to raise such sum of money as the selectmen may think necessary for the support of the poor chargeable to this town," is valid; but no sum can be legally assessed by the selectmen therefor until the sum necessary is actually ascertained; *3 N. H. R.*, 292. So in case of a vote by a school district to "raise a sum of money sufficient to remove the school-house, and to purchase land to set the school-house upon;" when the sum necessary is ascertained the selectmen may assess the tax, but not before. *Ibid.*

6. In order to render a sale by a collector valid, there must be a substantial compliance with all the requirements of the law. *3 N. H. R.*, 340.

7. When any property advertised for sale by a collector is owned by the tax payer in common with others, the interest or right of the tax payer in the whole property should be sold, and not the whole of a particular part of it. The collector should not attempt to make a division of the property; each owner has an interest in each parcel of the property. *3 N. H. R.*, 340.

8. If any part of the assessment is illegal the whole is void, and the selectmen are liable for making it. *3 N. H. R.*, 498.

9. A vote to "raise the sum of \$2,000 for the expenditures of the year," is improper, and a tax assessed therefor illegal. *3 N. H. R.*, 493.

But an article in the warrant, "to see what sum the town will raise for the support of schools, of the poor, repairing highways and bridges, paying the just debts of the town, and for other legal purposes," is sufficiently explicit, and a



vote under it "to raise \$2,000 for the expenditures of the current year, being the subject matter of the eighth article in the warrant, excepting for highways and bridges," is legal. 7 *N. H. R.*, 113, 115. It is not necessary to raise a specific sum for each particular object, except for repairing highways when the highway tax is paid in labor, and for schools. 7 *N. H. R.*, 126, 127.

10. When a person is requested by the selectmen to give an account on oath of his taxable property, he is bound to be ready to do it at once; if he does not, he must carry the account to the selectmen, and if he neglects it they may doom him. 4 *N. H. R.*, 118. So if he neglects at any time to make oath to his invoice when requested. 7 *N. H. R.*, 121. So if the owner is absent when the selectmen call, and no invoice is given in, it is his duty to give such invoice to the selectmen; if he neglects they may doom him. 8 *N. H. R.*, 169.

If the selectmen appoint a time and place for receiving invoices, and any person does not attend and give in his invoice, he may be doomed, unless he appears afterwards and shews good cause for his neglect. 8 *N. H. R.*, 169.

But if any invoice is given in by the owner, or any other person acting for him, and the selectmen receive it without objection, and never call upon him for another, nor give him notice to appear and give in another, they cannot doom him, nor tax him beyond such invoice, unless they discover property *fraudulently* concealed, for which they may tax him fourfold. 8 *N. H. R.*, 169.

If a person when called upon does not give in an account of his taxable property, but says in relation to a portion of it, that he is willing to be set down a certain sum, this is a *neglect*, for which the selectmen may doom. 7 *N. H. R.*, 113.

And this may be done by setting down in the invoice such property as they suppose he possesses, stating that it is doomage, and assessing the tax upon it as if he had given it in. 7 *N. H. R.*, 121.

11. When an invoice is given in, and some taxable property "*wilfully omitted*," such property is to be set down in the invoice at four times its value, stating also that it was *wilfully omitted*, and the tax assessed thereon. 7 *N. H. R.*, 122. And this may be done without any hearing before the selectmen. 4 *N. H. R.*, 127.

12. In order to render a sale of property by a collector valid, it must appear *by the record* that he took the oath of office by law prescribed. 6 *N. H. R.*, 182. "Duly sworn into office," is not sufficient. *Ibid.* So, "Qualified by F. Chase, Esq." is insufficient. 9 *N. H. R.*, 170. And it should appear that the moderator was sworn also. 7 *N. H. R.*, 140.

13. The grant of the state tax is proved by the statutes. The grant of the county tax must be proved by a copy of the record of the doings of the county convention which voted it, certified by the clerk of the court of common pleas. 6 *N. H. R.*, 191.

14. Property in a town belonging to an inhabitant, not given in by him, and not known to the selectmen to be his property, is rightfully taxed and sold as *non-resident*. 6 *N. H. R.*, 196.

15. The names of individuals and corporations should be stated correctly, and in full. But where "The Souhegan Nail, Cotton and Woollen Factory," was taxed as "The Souhegan Nail, Cotton and Woollen Corporation," it was held sufficient, there being no other of a similar name in town. 7 *N. H. R.*, 309.

16. The warrant of the collector may be sufficient evidence of his appointment, but a record of it by the town-clerk is better. 7 *N. H. R.*, 309.

17. In reckoning the *four* days which a distress must be kept, if it is seized on the 9th it may be advertised on the 13th, and sold on the 15th. 7 *N. H. R.*, 309.

18. A collector is not bound to search for property, but may arrest the body unless the party produces property sufficient, with indemnity as to title if required. 9 *N. H. R.*, 190.

19. The collector may collect any tax out of the town for which he is appointed, provided the person taxed removed therefrom after the first of April. 9 *N. H. R.*, 194.

20. The question, whether a tax is legally assessed or not, cannot be settled in a suit against the collector, because he is not liable even if it is not legally assessed. The action should be against the selectmen. 9 *N. H. R.*, 195.

21. The same rules apply to unincorporated places as to towns. *R. S.*, *ch.* 38, *sec.* 1.

22. Under an article in the warrant, "to see if the town will make an appropriation towards purchasing a fire

engine," the town may *raise* and appropriate the necessary sum; but if the article had named any fund out of which the appropriation was to be made, a vote to *raise* money would have been illegal. 21 *Pick. R.*, 64.

23. The selectmen are liable for assessing an illegal tax, as for *building a jail*, though voted by the town—10 *Vt. R.*, 506; or repairing a meeting house more than is necessary for town uses—5 *Greenleaf* 400. See ch. 1, "On the powers of towns." A town may vote to indemnify its agents, and assess a tax therefor—6 *Vt. R.*, 95; or for settling any disputed question in which the town is interested—18 *Pick. R.*, 565; or for the expenses of inoculation—2 *Vt. R.*, 427.

24. The collector must give bond, with sufficient sureties, to the acceptance of the selectmen, for the faithful discharge of his duties, within six days after his election or appointment, or the office shall be considered vacant, and his acts illegal. *R. S.*, ch. 36, sec. 4.

25. A collector of taxes may, with the assent of the town, resign his office. 7 *N. H. R.*, 209.

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## CHAPTER 27.

### ON EXTENTS.

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1. Extents, who may issue.           | 11. Alias extents issued.        |
| 2. Against towns for neglects.       | 12. Fees included in extents.    |
| 3. Against selectmen.                | 13. Remedy for contribution.     |
| 4. Against collectors not paying.    | 14. Remedy against selectmen.    |
| 5. Against collectors absconding.    | 15. Remedy against collectors.   |
| 6. Treasurers not to issue, when.    | 16. Collector to be indemnified. |
| 7. Extents against towns, when.      | 17. Remedy of selectmen.         |
| 8. Personal property, how sold.      | 18. Form of extent in section 4. |
| 9. Real estate, how sold.            | 19. Form of extent in section 5. |
| 10. Direction and return of extents. | 20. Form of indemnity.           |

1. The state treasurer, and each county and town treasurer, may issue extents under their hands and seals respect-

ively, in cases authorized by law ; and such extents shall be deemed to be executions against the person and property within the laws of this state relating to the levy of executions. *R. S., ch. 48, sec. 1.*

These laws may be found in the Revised Statutes, *chs. 194, 195, 196, 198, 199, and 200.*

2. Any town which shall neglect to choose proper officers for assessing and collecting taxes, shall be liable to an extent for state and county taxes ; and the same may be levied upon the property of any inhabitant or owner of property therein, if no estate of such town be found whereon to levy the same. *Ibid., sec. 2.*

3. Selectmen who shall neglect to assess any tax for which they have the warrant of the state or county treasurer, at the time and in the manner legally prescribed therein, or who shall neglect to return to either of such treasurers, or to the town treasurer, the name of the collector to whom they shall commit any tax assessed by them, and payable to such treasurers respectively, shall be liable to an extent. *Ibid., sec. 3.*

4. Any collector to whom any tax may be committed, who shall neglect to pay the same to the state, county or town treasurer, or to the selectmen or other person to whom the same is payable, within the time limited in his warrant, which shall not be less than three months from the delivery of such warrant, except in cases where a shorter time shall be limited by law, shall be liable to an extent. *Ibid., sec. 4.*

5. If any collector of taxes, to whom any tax payable to the state or county treasurer is committed, shall neglect to pay the same within the time limited in his warrant, and the selectmen of the town shall judge that there is danger that such collector will abscond, or be unable to pay the same, they may issue an extent against such collector for the taxes in arrear. *Ibid., sec. 5.*

6. No extent shall be issued by the state or county treasurer against any collector, after notice given by the selectmen that they have issued an extent against him as aforesaid ; but if such tax shall not be paid within three months from the time the same became payable, an extent shall be issued against such selectmen. *Ibid., sec. 6.*

The form of such notice may be thus :

*To the Treasurer of the County of Coos.*

You are hereby notified that the subscribers, selectmen

of Dalton, in said county, have issued an extent against T. D., collector of said Dalton for the year 1843, for his neglect to pay over the taxes committed to him to collect, agreeably to the orders in his warrant contained.

N. P. } *Selectmen*  
 S. L. } *of*  
 G. H. } *Dalton.*

Dalton, October 1, 1843.

7. In every case where an extent shall be issued against any selectmen or collector, by the state or county treasurer, and sufficient property of such selectmen or collector shall not be found whereon to levy the same, an extent shall be issued against the town, which may be levied upon the property of any inhabitant or owner of property therein, if no estate of such town be found whereon to levy the same. *Ibid.*, sec. 7.

8. Personal property seized upon any extent shall be sold in the same manner as similar property is by law required to be sold on execution. *Ibid.*, sec. 8. See *ch.* 194 of the Revised Statutes.

9. Real estate of every kind so levied upon shall be sold, and a deed and return thereof made, in the manner provided by law for the sale of the equity of redemption of real estate subject to any mortgage; and the owner thereof shall have the same right to redeem the same. *Ibid.*, sec. 9. See *ch.* 196 of the Revised Statutes.

10. Extents shall be directed to the sheriff, or his deputy, of the county where they are to be executed, and shall be made returnable to the officer issuing the same, at a certain day named therein, which shall not be less than sixty days from the date thereof. *Ibid.*, sec. 10.

11. If any extent shall be returned unsatisfied, further or alias extents may be issued for any sum which may remain due upon such return. *Ibid.*, sec. 11.

12. Every extent may include the legal fees and charges incurred upon any former extent issued for the collection of the same tax. *Ibid.*, sec. 12.

13. Every person upon whose property an extent against any town has been levied, shall have contribution against the other inhabitants, or owners of property therein, for the sums so levied, and for damages, and shall recover double costs. *Ibid.*, sec. 13.



14. Towns shall have their remedy by action against any selectmen or collector through whose default any extent may have issued, for all sums levied thereon, and for damages and double costs. *Ibid.*, sec. 14.

15. Selectmen shall have their remedy by action against any collector through whose default any extent shall have issued against them, for all sums levied thereon, and for damages and double costs. *Ibid.*, sec. 15.

16. Selectmen issuing any extent against a collector shall indemnify him against all costs and expenses arising to him by reason of any extent issued against him by the state or county treasurer, for the same tax. *Ibid.*, sec. 16.

17. Selectmen shall have no remedy against any town for any sum levied upon any extent issued against them on their own default, except the amount of tax, without any costs of levying, or costs of suit. *Ibid.*, sec. 17.

18. The form of the extent issued by the town treasurer, under section 4 of this chapter, may be thus :

#### STATE OF NEW-HAMPSHIRE.

BELKNAP SS. *To the Sheriff of said County, or his deputy.*



Whereas A. B., of C., in said county, a collector of taxes for said town, duly elected (if not *elected*, say *appointed*) and sworn, on the fifteenth day of May last received from the selectmen of said town a list of the assessment of a town tax duly voted to be raised by said town, made out by them, and amounting to the sum of eight hundred dollars, together with a warrant under their hands and seal, directing and authorizing him to levy and collect the several sums in said list contained, and pay the same to the treasurer of said town on or before the tenth day of October last ; and whereas the said A. B. has paid to said treasurer the sum of four hundred dollars only, but has neglected to pay the residue thereof, being four hundred dollars, as directed in said warrant, but has neglected it ;

In the name of said state you are commanded to levy the aforesaid sum of four hundred dollars by distress and sale of the real and personal estate of said collector, and pay the same to the treasurer of said town, returning the overplus, if any there be, to said A. B. ; and for want of such estate, to take the body of the said A. B., and him commit to the jail in

said county, there to remain till he has paid said sum of four hundred dollars, together with your fees, or be discharged by due order of law; and make return of this warrant to myself, or my successor, the treasurer of said town, within sixty days from the date hereof, with your doings thereon.

Given under my hand and seal, this twentieth day of November, in the year 1843.

P. D., *Treasurer of the town of C.*

19. The form of the extent issued under section 5 of this chapter may be thus :

STATE OF NEW-HAMPSHIRE.

BELKNAP SS. *To the Sheriff of said County, or his deputy.*



Whereas A. B., of C., in said county, a collector of taxes in said town, duly appointed (or *elected*, if the fact is so,) and sworn, on the fifteenth day of May last received from the selectmen of said town a list of the assessment of a county tax duly voted, made out by said selectmen, amounting to the sum of eight hundred dollars, with a warrant under their hands and seal, directing and authorizing the said collector to levy and collect the several sums in said list contained, and pay the same to the treasurer of said county, one half on or before the day of \_\_\_\_\_, and the other half on or before the first day of February, 1844; and whereas the sum of four hundred dollars, part of said sum of eight hundred dollars, is still unpaid, although the time for the payment thereof has expired, said collector having neglected to pay the same agreeably to the directions in said warrant; and whereas, in the judgment of the subscribers, selectmen of said town, there is danger that said collector will be unable to pay the same when called upon so to do by the county treasurer :

In the name of said state you are commanded to levy the aforesaid sum of four hundred dollars by distress and sale of the real and personal estate of said collector, and pay the same to the treasurer of said county, returning the overplus, if any there be, to said collector; and for want of such estate, to take the body of said collector and him commit to the jail in said county, there to remain till he has paid said sum, with your fees, or be discharged by due course of law; and make return of this warrant to ourselves, or our suc-

cessors, selectmen of said town, within sixty days from this date, with your doings thereon.

Given under our hands and seal, at said C., this sixth day of February, in the year 1844.

T. P. }  
R. M. } *Selectmen of C.*  
N. O. }

20. The *indemnity* mentioned in section 16 should be a bond in common form, with a penal sum perhaps twice as large as the taxes in arrear, and sufficient sureties, and a condition as follows :

The condition of this obligation is such, that whereas the selectmen of said town of \_\_\_\_\_, heretofore delivered to the said obligee, collector of said town, a list of the assessment of a county tax, with a warrant directing him to collect and pay over the same to the treasurer of the county, as therein directed ; and whereas said selectmen have issued an extent against said obligee, for the amount of taxes in arrear : Now if we shall fully indemnify the said collector against all costs and expenses which may arise to him by reason of any extent which may be issued against him by said county treasurer for the same tax, then this obligation shall be void ; otherwise in full force.

## TITLE IV.

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### OF HIGHWAYS AND BRIDGES.

- CHAPTER 28. Of the powers of selectmen in relation to laying out highways.
- CHAPTER 29. Proceedings of the court of common pleas and road commissioners.
- CHAPTER 30. Of the payment of damages and costs.
- CHAPTER 31. Of the discontinuance of highways.
- CHAPTER 32. Of repairing highways in towns.
- CHAPTER 33. Of repairing highways not in any town.
- CHAPTER 34. Of the liability of towns for not making and repairing highways, and for damages.
- CHAPTER 35. Of injuries to, and encumbrances and encroachments on highways, and the rights of the public and land-owners therein.
- CHAPTER 36. Of bridges, rail-roads, guide-boards and the law of the road.
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### CHAPTER 28.

#### OF THE POWERS OF SELECTMEN IN RELATION TO LAYING OUT HIGHWAYS.

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|------------------------------------|---------------------------------------|
| 1. Power of selectmen to lay out.  | 11. Franchises may be taken.          |
| 2. Notice of hearing to be given.  | 12. Return to be made, when.          |
| 3. Notice to residents, how given. | 13. Damages to be assessed, how.      |
| 4. Notice to minors and wards.     | 14. If owner unknown, how assessed.   |
| 5. To tenants and reversioners.    | 15. If owner aggrieved, remedy.       |
| 6. Notice by publication, when.    | 16. If owner not notified, remedy.    |
| 7. Examination and hearing.        | 17. Form of petition for public way.  |
| 8. Not restricted by petition.     | 18. Form of petition for private way. |
| 9. May lay out over highways.      |                                       |
| 10. Or across rivers above tide.   |                                       |

- |                                       |                                     |
|---------------------------------------|-------------------------------------|
| 19. Form of petition for alterations. | 25. Form of making alterations.     |
| 20. Form of order of notice.          | 26. Proceedings all to be recorded. |
| 21. Notice, how to be given.          | 27. Duties of selectmen.            |
| 22. If owner unknown, affidavit.      | 28. Selectmen liable, when.         |
| 23. Form of laying out public way.    | 29. When private way laid out.      |
| 24. Form of laying out private way.   | 30. When public way laid out.       |
|                                       | 31. Monuments to govern.            |
|                                       | 32. Damages, how to be estimated.   |

1. Selectmen upon petition are authorized to lay out any new highway, or to widen and straighten any existing highway within their town for which there shall be occasion, either for the accommodation of the public or of the person applying. *R. S., ch. 49, sec. 1.* The selectmen will be confined to the objects stated in the petition, and cannot lay out or alter a road in a manner different from that prayed for, except as to width, and except also as provided in section 8.

The word "*highway*" or road in any statute includes the bridges thereon. *R. S., ch. 1, sec. 21.*

2. Unless the selectmen shall be clearly of the opinion that the petition ought not to be granted, they shall appoint a time and place of hearing, and shall cause notice thereof in writing to be given to the first petitioner, and to the owners of the land over which the same may pass, fourteen days previous thereto. *R. S., ch. 49, sec. 2.*

3. Such notice shall be given to each owner in person, or left at his usual place of abode, if he is known and resides in the state—otherwise to the person, if any, who has the care or possession of the land. *Ibid., sec. 3.*

4. If the owner is a person under guardianship, notice shall be given in the same manner to his guardian. If such owner is a minor, or person under any legal disability, the judge of probate may appoint a guardian for such person, to whom notice shall be given. *Ibid., sec. 4.*

5. Tenants for life or years, and the owners of the remainder or reversion, shall each be separately notified as aforesaid. *Ibid., sec. 5.*

A tenant for life is one who has an interest in the land for his own life or the life of some other person. A tenant for years is one who holds land under a lease for any fixed period, though less or more than one year. Owners in remainder or reversion are those who own the land after the estate for life or years is ended. The husband's interest in



lands owned by his wife, and a widow's right of dower, are estates for life.

6. Upon affidavit of one of the petitioners that the owner of any land over which such road may pass, or his residence, is unknown or uncertain, such notice may be published three weeks successively in some newspaper printed in the vicinity, which shall be sufficient notice. *Ibid.*, sec. 6.

Such notice will be good only where the owner or his residence is unknown or uncertain. It should be ordered by the selectmen upon the affidavit of a petitioner. For form, see section 22.

7. At the time and place so appointed the selectmen shall make a personal examination of the several routes proposed, and of the highways for which such new highway is designed to be a substitute; shall hear all parties interested who may attend, and any evidence they may offer, and may adjourn as they see cause. *Ibid.*, sec. 7.

8. Such selectmen may lay out such new road over any ground they may deem most suitable, and widen and straighten any highway, as they judge proper, without regard to any intermediate limits or particular amendments described in the petition. *Ibid.*, sec. 8.

The selectmen must lay out the road, if at all, on the best route between the beginning and end described in the petition, but are not confined to any particular route, even if one is described by bounds, courses and distances.

9. Upon any petition for a new highway, they may lay out the same across or over any existing highway; but no damages shall be awarded when the public have the same right of way, except for additional land taken. *Ibid.*, sec. 9.

10. Highways may be laid out across any river or stream, except navigable tide waters; but no road or bridge shall be so constructed as to prevent the use of such stream or river for boats or rafts, and for running timber. *Ibid.*, sec. 10.

11. Any real estate, franchise or easement of any corporation may be taken for a highway, in the same manner as the real estate of individuals. *Ibid.*, sec. 11.

Without this provision neither selectmen nor courts possess any such power. 8 N. H. R., 398.

12. The selectmen shall within thirty days make a return of every highway by them laid out, describing the same and the width thereof, and a like return of alterations by them made in existing highways, with a particular descrip-

tion thereof, and cause the same to be recorded by the town-clerk. *Ibid.*, sec. 12.

13. Such selectmen shall assess the damages sustained by each owner of the land required for such highway, and insert the same in their return. Those of the tenant and remainderman or reversioner shall be assessed separately. *Ibid.*, sec. 13.

14. If the person to whom any damages should be awarded is unknown, a particular description of the land, real estate or franchise taken for any highway shall be inserted in the return of the selectmen, with the damages assessed to the owner, without naming any person. *Ibid.*, sec. 14.

15. If any person shall think himself aggrieved by the assessment of damages made by the selectmen, he may, within one year after such road is opened, petition the court of common pleas for redress; and the said court, after due notice to the town and others interested, may award such damages as may be just, and costs, to either of the parties in their discretion, and issue execution therefor. *R. S.*, ch. 50, sec. 9.

16. Any person who had no actual notice of the laying out or altering of any highway, may, within one year after the same shall be opened and made, apply to said court, as provided in the preceding section, and the court, after notice as aforesaid, shall award damages and costs, and issue execution therefor, as is therein provided. *Ibid.*, sec. 10.

17. The form of the petition for a highway for the accommodation of the public may be:

*To the Selectmen of the town of Peterborough, in the County of Hillsborough.*

Your petitioners represent that for the accommodation of the public there is now occasion for a new highway in said town, beginning at or near the school house in district No. 3, and thence running southerly to a stake and stone in the road near the house of John Smith, in said town:

Therefore we respectfully request you to lay out, on the route above described, a highway of the width of four rods, and to cause a record thereof to be made, according to law.

James Moore, &c.

The petition must set out the beginning and end of the new road distinctly, but should not state the intermediate bounds. If the route begins and ends in the same old highway, the selectmen under the above petition may make

alterations in the old highway between those points, or lay out a new highway.

18. The form of a petition for a highway for the accommodation of the persons applying, may be the same as in the section preceding, erasing the words, "for the accommodation of the public," and inserting instead—*for their accommodation.*

19. The form of a petition for widening and straightening a highway may be :

*To the Selectmen of the town of Peterborough, in the County of Hillsborough.*

Your petitioners represent, that for the accommodation of the public there is occasion that the highway in said town, leading from                    to                    should be made wider and straighter :

We therefore respectfully request you to make said highway wider and straighter, and to cause a record of such alterations to be made, according to law.

James Moore, &c.

20. The form of the order of notice on such petition may be :

On the foregoing petition it is ordered that the petitioners give notice to all the owners of lands through which the proposed highway may be laid out, to appear at the house of James Moore, in said Peterborough, on Thursday, the twentieth day of June instant, at nine o'clock in the forenoon, and shew cause, if any they have, why said petition should not be granted, by giving to each of said owners, or leaving at his usual place of abode, a copy of said petition and of this order thereon, at least fourteen days previous to said time of meeting.

Given under our hands this first day of June, 1843.

A. B. } *Selectmen*  
C. D. } *of*  
E. F. } *Peterborough.*

21. It is the duty of the petitioners to see that due notice is given, and such notice may be given by any person. If the owner resides in this state he must be notified personally ; if he resides out of the state notice may be given to the person, if any, occupying or having the care of the land. If the owner has a guardian he must be notified ; but if he is under any disability and has no guardian,

application should be made to the judge of probate to appoint a guardian. Every owner must be notified, or the laying out will be illegal; and it is prudent to notify the owners of lands on either side over which the road may possibly be laid out. If the owner or his residence is unknown, notice is to be given as in the next section. The notice given must be a copy of the petition and order of notice, and should be attested by the person giving the notice, thus: A true copy of the original. Attest: A. B.

The form of the certificate of notice, to be written on the back of the petition, may be:

I, A. B., certify that on the second day of June, 1843, I gave to D. E., G. H. and L. M. each a true and attested copy of the within petition and of the order of notice thereon, and on the third day of June, 1843, I left a like copy at the dwelling house of K. G. and D. P. respectively, being their respective usual places of abode. A. B.

HILLSBOROUGH ss., *June 20, 1843.* Then the said A. B. appeared and made oath that the foregoing certificate by him signed is true. Before me,

J. W., *Justice of the Peace.*

22. The form of the affidavit in section 6, may be thus:

I, James Moore, one of the petitioners named in the within petition, do testify that the owner of a lot of land, lying on the route within described, between the land of                      and the land of                      , is unknown, so that personal notice cannot be given. JAMES MOORE.

HILLSBOROUGH ss., *June 2, 1843.* Then appeared the said James Moore, and made oath that the above affidavit by him signed is true. Before me,

J. W., *Justice of the Peace.*

The order of the selectmen thereon may be thus:

Ordered that the within petition and order of notice be published in the                      , printed at                      , in said county, three weeks successively before the twentieth day of June instant.

A. B., &c., *Selectmen of Peterborough.*

The affidavit that such notice has been published may be made on the petition, thus:

HILLSBOROUGH ss., *June 20, 1843.* Then appeared the said James Moore, and made oath that the within petition and order of notice has been duly published as within directed. Before me, J. W., *Justice of the Peace.*



23. The form of laying out a road for the accommodation of the public may be as follows :

Upon the foregoing petition the subscribers, selectmen of said Peterborough, having given notice as aforesaid to all persons owners of or interested in lands through which the highway hereinafter described is laid out, to appear at the house of James Moore, in said Peterborough, on Thursday, the twentieth day of June instant, at nine o'clock in the forenoon, to shew cause, if any they had, why said petition should not be granted ; and having met at said time and place, and fully heard all parties interested who attended, and all evidence offered by them, and having made a personal examination of the several routes proposed, and of the highways for which such new highway is designed to be a substitute, and having duly considered said petition, are of opinion that there is occasion for a new highway on the route described in said petition.

We therefore lay out the same as follows : Beginning at a stake in the highway near the school-house in district No. 3, in said Peterborough ; thence south eight degrees east, through land of James Moore, forty rods, to a stake ; thence south six degrees west, through land of said Moore, twenty rods, to a stake ; thence south six degrees west, through land the owner of which is unknown, fifty rods, to a stake ; thence south twelve degrees west, through land of John Smith, thirty five rods, to a stake in the road near the house of said Smith. The line above described is to be the middle of the highway, and the highway is to be four rods wide.

We award to the owners of lands taken for said highway on said route the following sums, to be paid by said town :

To James Moore,	Eighty dollars.
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To the unknown owner of the land above described, lying southerly of and adjoining land of said Moore,	Sixty dollars.
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To John Smith,	Fifty dollars.
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Given under our hands at Peterborough, this twentieth day of June, 1843.

A. B. }	<i>Selectmen</i>
C. D. }	<i>of</i>
E. F. }	<i>Peterborough.</i>

24. The form of the laying out of a way for the accommodation of the petitioners may be the same as that in the section preceding, except as follows ; after the words, “ the



highway is to be four rods wide," add the following; *and to be made by the petitioners, and to remain a highway so long as said petitioners shall keep the same in repair, and no longer.* Also omit the words, "to be paid by said town," and add instead—*to be paid by the petitioners before this laying out is recorded.*

25. The form of the record in case of widening and straightening a highway, may be like that in sec. 23, omitting the words, "occasion for a new highway on the route described," and adding instead—*occasion for widening and straightening the highway.*

26. The return of the laying out and of alterations should be annexed to the petition, and the whole presented to the town clerk within thirty days after such laying out. The petition, order of notice, affidavits of service, affidavit that any owner is unknown, if any, and the order of notice and affidavit of publication thereof, and the selectmen's return, must be recorded by the town-clerk in the book of records, and attested by him thus :

A true copy of the original. Attest : D. P., *Town-clerk.*

The original should also be preserved and kept on file by him among the town papers.

27. Selectmen derive their authority to lay out highways from the statute, and in exercising the authority they must substantially pursue the directions of the statute ; otherwise their doings will be void. 3 *N. H. R.*, 337.

Selectmen have authority to lay out highways only in cases where a petition in writing is presented to them for that purpose. 3 *N. H. R.*, 338.

The width of the road laid out must be stated in the return distinctly, but if omitted by mistake it may be added to the return afterwards. If not so stated, an action for damages will lie for building the road. 3 *N. H. R.*, 10. If not stated, half of the road will be presumed to be on each side of the line of the road described, but it should be distinctly stated. 4 *N. H. R.*, 524.

And the laying out will be void, unless damages are awarded to every owner of land taken for such highway, and such damages stated in the return of laying out. 3 *N. H. R.*, 338.

And unless it appear that the owner was duly notified and had an opportunity to be heard. *Ibid.*

But if laid out through the land of an individual at his

request, there need be no petition, notice or award of damages. 4 *N. H. R.*, 520.

The power of selectmen in laying out highways is not judicial—6 *N. H. R.*, 524; but the power of the court of common pleas is so. *Ibid.*

28. If selectmen should lay out a road, not because the public convenience and necessity require it, but for other purposes which may be injurious to individuals, their acts are illegal, and they are answerable for damages; as for laying out a road round a turnpike gate merely to enable travellers to evade the payment of toll. 2 *N. H. R.*, 199; 5 *N. H. R.*, 561.

29. "Under what circumstances a highway may be laid out to accommodate an individual, is not settled. A case of strong necessity alone can furnish a proper occasion for such a highway, and justify the taking of the land of one individual against his will for the accommodation of another individual;" 5 *N. H. R.*, 560; but such a way when laid out is a public highway. 3 *N. H. R.*, 459.

30. "In determining the question when an occasion for laying out a highway for the accommodation of the public exists, there are three things to be considered; 1st. The public necessity and convenience; 2d. The burden that is to be imposed upon the town in making and keeping it in repair; 3d. The rights of individuals whose lands may be taken for the purpose. And the rule is, that when the public exigency is such, that it will justify the taking of the lands of individuals without their consent for this purpose, and will also justify the imposition of the burden upon the town of making the road and keeping it in repair, then there is occasion for a highway, and the rights of individuals must yield." 5 *N. H. R.*, 560. If the road is laid out for any other reason, the laying out is illegal. *Ibid.*

As if it is laid out because the petitioners offer to pay a part of the expense—5 *N. H. R.*, 562; or to build a part of the road—2 *Pick. R.*, 547; but after the road is laid out the town may receive donations. 5 *N. H. R.*, 562.

31. In the laying out of a road, monuments must govern rather than courses and distances—8 *N. H. R.*, 476; and the testimony of the committee of the location of a monument which is gone, as "*a stake*," is admissible. *Ibid.*

32. In estimating the damages occasioned to any person by the laying out of a highway, the value of the lands taken,

the expense of fencing against the road, and the damage done to the land remaining in any way, are to be taken into consideration; and from the amount is to be deducted the benefit of the road, if any, to the owner of the land. Sometimes the injury may be great, as by cutting off water, &c., when he should have liberal damages; and sometimes the road may in fact be a benefit to him, in which case he is entitled to little or no damages; but this should be so stated. *5 Mass. R.*, 435; *9 Mass. R.*, 388.

The owner may release his claim to damages before the selectmen, and such release should be stated in their return, and will be binding. *15 Pick. R.*, 81.

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## CHAPTER 29.

### PROCEEDINGS OF THE COURT OF COMMON PLEAS AND ROAD COMMISSIONERS.

- |   |   |
|---|---|
| 1. Power of court of common<br>pleas to lay out road, when. | 3. Duty of road commissioners.<br>4. Grade of road, how prescribed. |
| 2. Notice, how to be given.                                 |   |

1. Petitions relative to roads may be presented to the court of common pleas in term time, or to the clerk in vacation, in the following cases:

I. Whenever the selectmen shall neglect or refuse to lay out, or to widen and straighten a highway in their town;

II. When there shall be occasion to lay out a highway over land not in any town;

III. When there shall be occasion to lay out or widen and straighten a highway over lands in two or more towns, one of which is in the county where the petition is presented;

IV. Whenever any town shall discontinue any highway laid out by the selectmen within two years from the time of such laying out. *R. S.*, ch. 50, sec. 1.

2. Upon the filing of such petition with the clerk of the

court in vacation, or with the court in term time, the clerk shall issue an order of notice to one of the petitioners, with a copy of said petition, returnable to the next term of the court: and said petitioners shall cause a certified copy of the same to be given to or left at the usual place of abode of one of the selectmen and the town-clerk of each of the towns through which such road may pass, thirty days before the next term of said court. *Ibid., sec. 2.*

3. All such petitions shall be referred to the road commissioners, who shall appoint a time and place of hearing thereon, give notice thereof to the selectmen and town-clerk of the towns through which such road passes, make examination and hear all parties, and make a report of their doings to the court. They shall assess the damages to each owner, and insert the same in their report, stating such damages in each town separately, and shall certify the damages awarded to such owners to the town-clerk fourteen days before the sitting of the court to which their report is returnable. *R. S., chs. 50, 51.*

4. The road commissioners may prescribe in their report the grade, or rise and fall to the rod, of any highway by them laid out, or of any existing highway for which a proposed highway not laid out might be a substitute; and their report being accepted, if any town shall neglect to make such highway in conformity thereto, such town may be indicted and fined as for a neglect to make or repair highways. *R. S., ch. 51, sec. 9.*

## CHAPTER 30.

### OF THE PAYMENT OF DAMAGES AND COSTS.

- |                                   |                                 |
|-----------------------------------|---------------------------------|
| 1. Damages paid before road made. | 7. Damages, by whom to be paid. |
| 2. What cases excepted.           | 8. County may pay part, when.   |
| 3. Damages recovered by action.   | 9. Costs paid by county, when.  |
| 4. If road discontinued, limited. | 10. Costs paid by towns, when.  |
| 5. Actual loss recovered only.    | 11. Damages not recovered back. |
| 6. Fine, proceedings in case of.  | 12. Petitioners to share costs. |

1. No new highway or alteration in any highway shall be



made by any town, until the damages awarded to the owners of land or other estate taken therefor shall be paid, except in cases provided by law. *R. S., ch. 52, sec. 1.*

2. If the owner of such land or real estate is a minor or insane, and has no guardian, or resides out of the state, or is unknown, such new highway or alteration may be made without tender or payment of their damages. *Ibid., sec. 2.* The damages should be ready, however, to be paid on demand.

3. If any highway or alteration therein, shall be laid out and established, any person to whom any damages shall be awarded may recover the same, with interest, from the person or town liable to pay the same, in case the same shall not be paid to him within thirty days after the same shall be demanded. *Ibid., sec. 3.*

4. All actions to recover damages awarded for lands taken for highways which may be discontinued, shall be brought within six months from the time of such discontinuance, and not afterwards. *Ibid., sec. 4.*

5. In actions for the recovery of damages for lands taken for highways, only the amount of the actual loss or damage shall be recovered, in case such highway has been discontinued. *Ibid., sec. 5.*

6. If a fine shall be imposed upon any town for not making or altering any highway, and an agent shall be appointed to superintend the making thereof, the court on motion may issue execution against such town for the damages awarded to any land-owner, and such highway may be made or altered without payment or tender thereof. *Ibid., sec. 6.*

7. Damages assessed upon the laying out of any highway for the accommodation of individuals, shall be paid by them. Those assessed upon the laying out or altering of any highway for the accommodation of the public, shall be paid by the town in which the land taken for such highway shall lie. *Ibid., sec. 7.*

8. The court of common pleas, if they deem the expense of laying out any new highway, paying the damages and building the same, unjustly burdensome to any town, may order a part, not exceeding one half such expenses, to be paid by the county; and may draw an order on the county treasurer in favor of such town therefor. *Ibid., sec. 8.*

The form of a petition for such an allowance may be as follows :



*To the Honorable Justices of the Court of Common Pleas  
for the County of Hillsborough.*

The subscribers, selectmen of the town of Hancock, in said county, in behalf of said town, respectfully represent, that a new highway has been laid out in said town by the road commissioners of said county, on the petition of A. B. and others, filed in this court, and that the expense of laying out said highway, paying the damages and building the same is unjustly burdensome to said town. They therefore pray your Honors to order such a part of said expense as may be reasonable to be paid to said town out of the county treasury, and for such relief as is provided by law.

D. P.	}	<i>Selectmen of Hancock.</i>
L. C.		
E. W. jr.		

An allowance may be made where the highway is laid out by the selectmen. In such case the petition may be like the foregoing, omitting the words, "road commissioners of said county," and inserting instead—*selectmen of said town.*

9. The costs of laying out and of widening and straightening highways from town to town, or through land not in any town, shall be paid by the county. *Ibid.*, sec. 9.

10. The costs of laying out and of widening and straightening any highway in any town, shall be paid by the town, except such part thereof as the court of common pleas may order to be paid by the county. *Ibid.*, sec. 10. See sec. 8, of this chapter.

11. If the land-owner has received his damages, the money cannot be recovered back by the town, although the road is never made. 4 *N. H. R.*, 517.

12. All the petitioners for a road are liable to pay the expenses incurred in endeavoring to procure it laid out; and if one acts as agent, the rest are liable to him for their proportion. 8 *N. H. R.*, 182.

## CHAPTER 31.

## OF THE DISCONTINUANCE OF HIGHWAYS.

- |                                |                               |
|--------------------------------|-------------------------------|
| 1. Town may discontinue road.  | 4. Effect of discontinuance.  |
| 2. Discontinuance, when valid. | 5. Damages, when recoverable. |
| 3. Damages thereby to be paid. |                               |

1. Any town, at a legal meeting holden for the purpose, may discontinue any highway in such town. *R. S., ch. 54, sec. 1.*

In order to make such a vote legal, an article for that purpose must have been inserted in the warrant for the town meeting, the form of which may be thus :

To see if the town will vote to discontinue the new highway laid out in said town by the road commissioners of said county, on the petition of James Moore and others.

The record of the vote of discontinuance may be thus :

*Voted*, to discontinue the new highway laid out in this town by the road commissioners of this county, on the petition of James Moore and others.

If the road was laid out by the selectmen, omit the words, "road commissioners of said county," and insert instead—*selectmen of said town.*

2. No vote of discontinuance shall be effectual, without the consent of the court of common pleas, if such road was not laid out by the selectmen, or if it was laid out by the selectmen during the pendency of any petition in the court of common pleas for the laying out thereof, or if an indictment or information is pending against such town for neglect to make or repair such highway. *Ibid., sec. 2.*

In such case the selectmen, in behalf of the town, should immediately petition the court of common pleas for leave to discontinue such highway, setting forth in the petition the vote of the town.

3. If any person is injured by the discontinuance of any highway, he may petition the court of common pleas for redress ; and the court, after due notice to others interested, may award such damages and costs as may be just, and issue execution therefor against the town. *Ibid., sec. 3.*

This is a new provision in our laws ; but it seems reason-

able that if the public good requires a road to be discontinued, and any individual is injured thereby, he should be recompensed. The injury is often greater in such case than in laying out a new road.

4. "When a highway is legally discontinued the public right of passage ceases, the duty of the town to keep it in repair no longer exists, and the owner has his land again free from the incumbrance." 4 *N. H. R.*, 518.

5. Although a highway is discontinued before it is opened or worked, or any contract is made to work it, yet a person who sustains damages by reason of such discontinuance is entitled to recover such damages. 3 *Metcalf R.*, 558.

## CHAPTER 32.

### OF REPAIRING HIGHWAYS IN TOWNS.

- |   |   |
|---|---|
| 1. Highway tax, how raised.                       | 14. Timber, &c., to be purchased.                 |
| 2. Prices of labor, how fixed.                    | 15. Gravel, &c., how removed.                     |
| 3. Surveyors, how chosen or appointed.            | 16. Tax not needed in district, where worked out. |
| 4. Districts to be limited; surveyor's warrant.   | 17. Time of travelling allowed.                   |
| 5. Notice to work to be given.                    | 18. Expense of repairs paid by county, when.      |
| 6. Notice on sudden emergency.                    | 19. Such expense, how paid.                       |
| 7. Tax levied by distress, when.                  | 20. Surveyors' districts, limits.                 |
| 8. Excuse may be made, when.                      | 21. Form of surveyor's warrant.                   |
| 9. Account rendered by surveyors.                 | 22. Proceedings on distress.                      |
| 10. Extent for neglect, when.                     | 23. Power of surveyors.                           |
| 11. Tax worked in other districts.                | 24. What is a legal choice.                       |
| 12. Tax may be raised in money and expended, how. | 25. If road out of repair, notice.                |
| 13. Collector's power in that case.               | 26. If no highway districts.                      |
|   | 27. Road may be levelled, when.                   |

1. Every town, at their annual or other meeting, shall raise such sum of money as they may judge necessary for making and repairing the highways and bridges therein for that year, and the same shall be assessed on polls and es-

tates, in the same manner as state taxes are by law assessed. *R. S., ch. 55, sec. 1.* See ch. 21, "Of the assessment of taxes."

2. The town may determine the prices to be allowed for labor, utensils and materials applied in repairing highways; otherwise such prices shall be fixed by the selectmen. *Ibid., sec. 2.*

The prices allowed for labor, utensils and materials should be inserted in the surveyors' warrants.

3. The town may choose as many surveyors of highways as they shall judge proper, who shall enter on their duties on the first day of May; and in case no election shall be made, the selectmen shall appoint such surveyors. *Ibid., sec. 3.*

The form of such appointment may be :

#### STATE OF NEW-HAMPSHIRE.

*To A. B., of C., in the County of Carroll.*

Whereas there is a vacancy in the office of surveyor of highways in district No. 2, in said town, for the year 1843; we, the subscribers, selectmen of said town, do hereby appoint you surveyor of highways for said district, and you are to possess all the powers and execute all the duties by law appertaining to said office.

Given under our hands this twentieth day of April, 1843.

*D. P., &c., Selectmen of C.*

4. The selectmen, on or before the first day of May, shall limit the several surveyors' districts, and give to each a list of the several persons in his district, with the highway tax assessed to each, and a warrant to collect the same. *Ibid., sec. 4.*

5. Every surveyor shall give personal notice to, or leave a notice at the usual place of abode of each person named in his list, of the amount of his tax, and of the time when, the place where, and the tools with which he shall attend to work out his tax, four days before the time appointed, and may require any person to work any part of his tax, not exceeding one half, in the labor of oxen or horses. *Ibid., sec. 5.*

6. In cases of sudden emergency, which may require immediate remedy, the surveyor may give such notice to any person to attend forthwith. *Ibid., sec. 6.*

7. If any person so notified shall neglect or refuse to attend in person, or by one or more suitable laborers, the surveyor shall levy the delinquent's tax by distress, in the same manner as collectors may levy and collect the state tax. *Ibid.*, sec. 7.

For directions how to proceed in such case, see chs. 23 and 26.

8. If any delinquent shall, within four days after the time so appointed, render to the surveyor a sufficient excuse for his neglect, he shall be notified to work at some other time. *Ibid.*, sec. 8.

9. Every surveyor shall render an account of the tax to him committed, and pay over the balance not expended on the highways, to the selectmen, agreeably to the requirement of his warrant. *Ibid.*, sec. 9.

10. If any surveyor shall neglect to render such account and pay over such balance, the selectmen may proceed with such surveyor in the same manner they may by law proceed with collectors of taxes who are delinquent in collecting and paying over the taxes committed to them to collect. *Ibid.*, sec. 10.

This proceeding is by issuing an extent. See ch. 27.

11. The selectmen may order any surveyor to cause the taxes then due on his list, to be worked out in any other district in which the taxes from any unforeseen accident shall be found insufficient; and if the taxes then due shall be insufficient, the selectmen shall cause the road or bridge affected by such accident to be put in repair at the expense of the town. *Ibid.*, sec. 11.

This order may be as follows:

*To A. B., Surveyor of Highways in District No. 1, in the Town of Goffstown.*

You are hereby required to cause the sum of fifty dollars, part of the taxes on the list of highway taxes committed to you, to be immediately worked out and expended on the highways in district No. 3, in said town, under your direction, according to law.

*C. D., &c., Selectmen of Goffstown.*

12. Any town may order any highway tax, then voted to be raised, to be collected by the collector of taxes in money; and such tax shall be paid over to the treasurer or select-



men, and expended in repairing the highways, under the direction of the selectmen or surveyors of highways, as the town may direct. *Ibid.*, sec. 12.

13. The collector of taxes shall have the same powers and be subject to the same duties in relation to any tax so voted, as he has in relation to the state tax. *Ibid.*, sec. 13.

14. Surveyors of highways shall purchase all such timber, plank and other materials as are necessary for repairing the highways and bridges in their respective districts, at the cost and charge of the town. *Ibid.*, sec. 14.

15. Every surveyor shall have power within his district to remove any gravel, sand, rocks or other materials from the travelled part of any highway therein, without damage or injury to the adjoining land, to any other part of the highway in said district, for the purpose of repairing and grading the same; but he or those under him shall not for any purpose make an uncovered trench or ditch by the side of the travelled part of any highway next and opposite to any dwelling-house or yard situate thereon, or in any way obstruct the passage to and from the same. *Ibid.*, sec. 15.

16. Whenever the whole tax in any surveyor's list is not, in the opinion of the selectmen, needed for repairing the highways in his district, they may direct the surveyor to cause the same to be worked out in any other district. *Ibid.*, sec. 16.

The order may be the same as in sec. 11.

17. The surveyor shall allow every person resident in his district performing labor or service on the highways, for the time necessarily occupied in travelling from his home to the place where such labor is performed, and in returning therefrom. *Ibid.*, sec. 17.

18. The court of common pleas, upon petition, may order any part of the expense of repairing any highway to be paid from the county treasury, in case they shall judge the expense of such repairs to be unjustly burdensome to such town, or in case the county convention shall be of opinion that any part of such expense should be paid by the county. *Ibid.*, sec. 18.

The form of such petition may be as follows :

*To the Honorable Justices of the Court of Common Pleas  
for the County of Coos.*

The subscribers, selectmen of the town of D., in said

county, in behalf of said town respectfully represent that the expense of keeping in repair the highway in said town, leading from to , is unjustly burdensome to said town of D.

We therefore request your Honors to order such part of said expense as may be reasonable, to be paid to said town of D. from the county treasury, or that such highway may be put in repair by said county.

A. B., &c., *Selectmen of D.*

19. The court may direct such sum as they may order to be paid by the county, to be paid to the town, or may cause such highway to be put in repair in such manner as they may think proper, and may draw their order for said sum upon the county treasurer. *R. S., ch. 55, sec. 19.*

20. The limits of surveyors' districts should be fixed by the selectmen, signed by them and recorded in the town books on or before the first day of May.

The form may be as follows :

We the subscribers, selectmen of the town of P., hereby fix the following limits to the several surveyors' districts in said town :

District No. 1 shall embrace all the highways and bridges within the following limits: from the house of A. B. by the house of C. D., to the town line ; also the road leading from said road, by the house of E. F., to the road leading from said P. to H. District No. 2 shall embrace, &c., &c.

A. B., &c., *Selectmen of P.*

If the selectmen make no alteration in the limits last recorded, the record may be :

We the subscribers, selectmen of the town of P., hereby fix and assign the same limits to the several highway surveyors' districts in said town as have been heretofore assigned to the same respectively.

A. B., &c., *Selectmen of P.*

21. The form of the surveyor's warrant may be :

STATE OF NEW-HAMPSHIRE.

MERRIMACK SS. *To Peter Jones, surveyor of highways for district No. 1; in the town of Bow, in said County, for the year eighteen hundred forty-three.*



In the name of said state you are required to give personal notice to each person named in the list herewith committed to you, or leave a written notice at his usual place of abode, of the

amount of his tax, and of the time when, the place where and the tools with which he shall attend to work out his tax, four days before the time appointed; and to cause said taxes to be worked out upon the highways in said district, under your direction, until said persons have paid respectively the sums set against their names in said list, at the following prices:

(Here insert the price of labor, tools, &c., as fixed by the town or by the selectmen.)

And you are to cause said taxes to be applied to the repair of the highways in said district at the times when and places where it may be most usefully applied, and may require any person to work out any part of his tax, not exceeding one half, in the labor of oxen or horses. The limits of your said district are as follows: (Here insert the limits of the district.)

And if any person named in said list, having had four days notice to work as aforesaid, shall neglect or refuse to attend in person or by one or more suitable laborers, and shall not within said four days render to you a sufficient excuse for his neglect, you are to give a written notice of the amount of his tax to such person, or leave a like notice at his usual place of abode. If the same is not paid within fourteen days after such notice, you are to collect the same by distress and sale of the goods of the person so neglecting; but in case you have good reason to believe that such person is about to remove from town, you may distrain within said fourteen days. In no case, however, are you to make distress of any person's tools or implements necessary for his trade or occupation, nor of his military uniform, arms and equipments, nor of utensils of household necessary for upholding life, nor of bedding or apparel necessary for him or his family. And for want of goods or chattels whereon to make distress, you are to take the body of any person so neglecting or refusing to pay, and him commit to the common jail in the county, there to remain until discharged by due course of law.

You are to keep any such distress four days (unless the tax and charges shall be sooner paid,) at the cost of the owner; and if the tax, cost and charges are not then paid, you are to post up in two or more public places in the town, twenty-four hours at least before the time of sale, a notice of the place, day and hour of the sale, with a particular de-

scription of the property to be sold. Such sale shall be within the town where the distress is made, within forty-eight hours after the expiration of the four days, and between the hours of ten in the forenoon and six in the afternoon; and you are then and there to sell the same at public auction to the highest bidder. You are also immediately after such sale to deliver or have ready to deliver on request to the owner of the property sold, a particular account in writing of his taxes, your fees, the charges of keeping and sale, and the amount of sale of each article sold, with the overplus, if any, after deducting said tax and charges.

And you are to settle your accounts with and pay over any balance in your hands, if any, to the selectmen of said town, at the expiration of your official year.

Given under our hands and seal, this twentieth day of April, in the year eighteen hundred forty-three.

R. M.	} <i>Selectmen of Bow.</i>
A. P.	
T. D.	

22. When any distress is made by the surveyor, he must make a return of his doings on his warrant, and this return should state particularly the giving of the notice required in section 5, the giving of the second notice to pay, the posting up of advertisements, and every other act which the law requires. This return is the sheriff's protection, and should be made with great care, so as to state all the facts fully and explicitly. 15 *Maine R.*, 248.

23. A surveyor may cut and remove trees growing in a highway, so far as is necessary to make the road or keep it in repair; but if he converts the wood to his own use he will be a trespasser. 1 *N. H. R.*, 16.

24. A surveyor of highways, chosen at a meeting not legally holden, is not a legal officer, and cannot legally make a distress. 7 *N. H. R.*, 206.

25. If a road in any district is out of repair, and the highway tax of the district is not sufficient to repair it, the surveyor should immediately notify the selectmen, who shall cause the repairs to be made at the expense of the town. Sec. 11, of this chapter.

26. If the limits of a surveyor's district are assigned, he is the sole judge of the duties to be performed within such limits; but if the selectmen neglect to assign any limits, it



will be necessary for them to act together or by the voice of the majority of the whole number. 1 *Pick. R.*, 426.

27. If the public safety and convenience require a levelling of the road, he must do it with as much care, in relation to property bordering on the road, as it is possible for him to use; and if he should abuse his authority by digging down or raising up, where it might not be necessary for the reasonable repair of the road, he would be liable to any suffering party for damages. 1 *Pick. R.*, 428.

## CHAPTER 33.

### OF MAKING AND REPAIRING HIGHWAYS NOT IN ANY TOWN.

- |  |                                 |
|--|---------------------------------|
| 1. Owners to contribute to expenses of building roads. | 7. Deed, who to make, when.     |
| 2. Notice of laying out given.                         | 8. Money, how to be applied.    |
| 3. Tax to be assessed, how.                            | 9. Repairs made in same manner. |
| 4. Notice of tax and sale given.                       | 10. Owners may assess tax.      |
| 5. Owner may pay his part.                             | 11. Powers of legislature.      |
| 6. Sale to be made, how.                               |                                 |

1. Highways, not within the limits of any town, shall be made and repaired by the owners of the lands through which they pass; and all the owners of any land, holden under one title from the state or province, shall pay their proportion, according to their interest, of all costs of making and repairing the highways through any part of such land. *R. S.*, ch. 56, sec. 1.

2. The court of common pleas, whenever they shall lay out any highway through such land, shall cause notice thereof to be published in some newspaper, four weeks successively, describing such highway, and requiring the owners of the land to make said highway passable within such reasonable time as they may order; and said court may order the whole or a reasonable part of the expense of making or repairing said highway to be paid by the county. *Ibid.*, sec. 2.



3. If such highway shall not be made as required by such notice, the said court shall assess such land so much by the acre as they may judge necessary to make the same. *Ibid.*, sec. 3.

4. The county treasurer shall advertise such tax in some newspaper four weeks, requiring the owners of such land to pay the same to him in sixty days from the first publication of such advertisement, and notifying the owners that such land will otherwise be sold at auction, at a certain time and place mentioned therein. *Ibid.*, sec. 4.

5. The owner of any part of or interest in such tract may pay said tax for the same, and take a receipt describing the part or interest for which he pays. *Ibid.*, sec. 5.

6. If said tax is not paid within said sixty days on any part of such land, the county treasurer shall sell the part or interest of the delinquent, at the time and place mentioned in such advertisement, or so much thereof as may be necessary to pay said tax with incidental charges. *Ibid.*, sec. 6.

7. The county treasurer shall make a deed of the land so sold, to the purchaser, after the time of redemption has expired; and any person interested therein may redeem the same by payment or tender to the county treasurer, for the use of the purchaser, of the amount for which the same was sold, with twelve per cent. interest thereon, within one year from the sale. *Ibid.*, sec. 7.

8. The money so raised shall be applied, under the direction of the court, to make and repair such highways. *Ibid.*, sec. 8.

9. A similar method may be pursued by said court to keep in repair highways running through said lands, in case the owners shall neglect to repair the same. *Ibid.*, sec. 9.

10. The owners of such lands may call meetings, and vote such sums of money for making and repairing highways as they may think proper, and choose officers for levying and collecting the same, as proprietors of common and undivided lands are by law authorized to do. *Ibid.*, sec. 10. For the powers of such "proprietors," see *R. S.*, ch. 143.

11. "The legislature has no constitutional right to grant a tax upon lands in a particular town or place for the purpose of making or repairing roads in such town or place." 4 *N. H. R.*, 572. The law must be general, applying to all towns or places in the state. *Ibid.*

## CHAPTER 34.

### OF THE LIABILITY OF TOWNS FOR NOT MAKING AND REPAIRING HIGHWAYS.

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Town fined for neglect, when.</li> <li>2. Notice of prosecution given.</li> <li>3. Proceedings in such case.</li> <li>4. Witness's fees, how paid.</li> <li>5. Fines, how collected.</li> <li>6. Agents to be appointed.</li> <li>7. Public highway, what is.</li> <li>8. Town liable for damages.</li> <li>9. Surveyor, when liable.</li> <li>10. Weight of load limited.</li> </ol> | <ol style="list-style-type: none"> <li>11. Width of felloes regulated.</li> <li>12. Number of cattle limited.</li> <li>13. Burden of proof on plaintiff.</li> <li>14. Liability for snow also.</li> <li>15. Liable for private way.</li> <li>16. Liability, rules respecting.</li> <li>17. Liable by user, when.</li> <li>18. Duty if repairs necessary.</li> <li>19. Road, when out of repair.</li> </ol> |
|---|--|

1. Fines shall be imposed upon towns for neglect to make or repair highways, in the following cases :

I. If any town shall unreasonably neglect to make and put in good repair any new highway laid out therein ;

II. If any town shall unreasonably neglect to alter and put in good repair any highway which has been widened and straightened therein ;

III. If any town shall unreasonably neglect to grade the hills in any highway therein, agreeably to the judgment of the court of common pleas ;

IV. If any town shall neglect to cause any dangerous causeway or embankment in any highway therein to be securely railed ;

V. If any town shall neglect to keep any highway therein in good repair, and suitable for the travel passing thereon.

*R. S., ch. 53, sec. 1.*

The *third* and *fourth* articles in this section are new, and the latter deserves the especial attention of town officers.

2. The grand jury may indict, or the attorney-general or solicitor may file an information against, any such town, for either of said offences ; and a summons shall thereupon be issued to such town, which shall be served by giving to one of the selectmen, and to the town-clerk, or leaving at their usual places of abode respectively, an attested copy thereof,

with a like attested copy of the officer's return thereon, thirty days before the court at which the same is returnable. *Ibid.*, sec. 2.

3. If such town shall not appear at said court, or shall be found guilty by verdict or otherwise, the court shall impose on such town a fine sufficient to put such highway in perfect repair, and to defray all the expenses connected therewith, and render judgment against such town for costs. *Ibid.*, sec. 3.

4. No fees for witnesses shall be taxed against such town, except such as have attended as witnesses in such prosecution by order of the attorney-general or solicitor. *Ibid.*, sec. 4.

5. All such fines and costs shall be levied and collected by execution, in the same manner as executions against towns are levied in civil cases. Such fine shall be paid over to the agent appointed as is herein prescribed, and the costs to the attorney-general or solicitor. *Ibid.*, sec. 5.

6. One or more agents shall be appointed by the court to superintend the collection of such fine, who shall apply the same to make, alter, repair, grade or secure such road, as the case may require, and who shall seasonably make return of his doings in the application and expenditure thereof to said court for their allowance. *Ibid.*, sec. 6.

7. No highway that has not been laid out agreeably to statute law shall be deemed a public highway, unless the same has been used by the public for a term of time not less than twenty years; and no highway thrown open to the public, the use of which would not be necessary for public travel, excepting for the purposes of travel over a toll bridge, shall ever be deemed a public highway, unless the same shall be laid out agreeably to statute law. *Ibid.*, sec. 7.

This provision is new, and its effect upon the liability of towns is very extensive. Previously, the use and repair of a way by a town made it a *public highway*, so as to make the town liable; now a legal laying out or twenty years' use is essential.

8. In case any special damage shall happen to any person, or to his team or carriage, by reason of the obstruction, insufficiency or want of repair of any highway or bridge in any town, the person injured shall recover his damage in an action against such town. *R. S.*, ch. 57, sec. 1.

The town is not liable for such damage except by this chapter. 2 *N. H. R.*, 393.

9. The town shall have a remedy over against any surveyor of highways through whose fault or neglect the said damage happened. *Ibid.*, sec. 2.

10. No town or corporation shall be liable for any damage happening to any carriage from any deficiency of any highway or bridge, if the weight of the load upon such carriage, exclusive of the carriage, shall exceed seven tons. *Ibid.*, sec. 3.

11. No town or other corporation shall be liable for any damage arising from any deficiency of any highway or bridge, if the weight of the load upon the carriage, exclusive of the carriage, shall exceed four tons, unless the felloes of the wheels of such carriage shall be of the width of five inches or more. *Ibid.*, sec. 4.

12. No town or corporation shall be liable to any person for any damage occasioned to droves of cattle by reason of the deficiency of any bridge, where the number of cattle on such bridge at the same time shall exceed twenty-five. *Ibid.*, sec. 5.

13. Upon the trial of any action for the recovery of such damage, it shall be incumbent on the plaintiff to prove the weight of such load, or the number of cattle upon such bridge. *Ibid.*, sec. 6.

14. Every town and surveyor of highways shall be liable for any damage arising from the snow encumbering the same, as from any other deficiency; and such surveyor and the selectmen shall have the same powers, and be subject to the same duties in relation to such encumbrance, as in case of any other accident occurring to a highway. *Ibid.*, sec. 7.

15. A way laid out for the accommodation of individuals is a public highway. Every person having occasion has a right to use it, and the town is bound to keep it in repair. 3 *N. H. R.*, 463, 465.

16. "Towns are not liable for damages occasioned to an individual, if he was in fault, or unless the injury resulted directly from the want of repairs. The principles which must govern actions upon the statute are easily illustrated.

"Suppose a bridge across a stream in a town is so out of repair and ruinous as to be manifestly unsafe to pass. Any person coming to such bridge with his horse, carriage or team might, with great propriety, decline to pass it; and if he sustained any special damage by reason of his being un-



able to pass it, he might well maintain an action against the town.

“ But if in such case, knowing the situation of the bridge, he should attempt to pass with his horse or team, and they should be lost or injured, he could maintain no action against the town, because the loss must be attributed to his own fault and folly in attempting to pass such a bridge. Or, if finding the bridge impassable, he should lose his horse in an attempt to ford the stream, the town would not be liable for the loss of the horse, because the damage in such case did not result directly from any defect in the bridge, but from some danger in fording the stream. But if, coming to the bridge in the night, without any notice of its defects, he should lose his horse in attempting to pass it, the town would be liable.” 2 *N. H. R.*, 394.

And towns are liable whether the defect was previously known to exist or not—3 *N. H. R.*, 53; and although the road is in the same state as when first made and accepted—*Ibid.*; 16 *Mass. R.*, 106.

17. A bridge, though erected by individuals, yet if dedicated to the public, and used freely by them so long as to evince its public utility, must be kept in repair by the town; 2 *N. H. R.*, 513; but not unless so used *twenty years*; section 7 of this chapter.

18. If a road or bridge is out of repair, travellers should be warned of their danger by a railing, or by something else which may answer the same purpose. This should be done by the surveyor, and the necessary repairs made without delay. 2 *Fairfield's R.*, 274. Whether a bridge has been wantonly destroyed by individuals, or accidentally by fire or flood; whether an excavation has been made by design, or by running waters; whether an obstruction in the road has happened by the unauthorized act of individuals, or by the falling of trees uprooted by the wind, the public convenience equally requires that the necessary repairs should be speedily made, and the law has imposed on towns both the duty and the liability. *Ibid.*

19. Towns are not bound to keep the whole width of the road, from one boundary to the other, free from obstructions and fit for the use of travellers, but only a reasonable part thereof. 16 *Pick. R.*, 189. And if travellers are injured out of such travelled part, if of reasonable width, the town is not liable for such injury. *Ibid.*



## CHAPTER 35.

## OF INJURIES TO AND ENCUMBRANCES AND ENCROACHMENTS ON HIGHWAYS, AND THE RIGHTS OF THE PUBLIC AND LAND OWNERS THEREIN.

- |                                 |                                  |
|---------------------------------|----------------------------------|
| 1. Injuring highway, liability. | 10. Gates on road, when allowed. |
| 2. Liable for all damage done.  | 11. Appeal to court, when.       |
| 3. Encumbrances, how removed.   | 12. Form of complaint in sec. 4. |
| 4. Complaint, when to be filed. | 13. Form of order of notice.     |
| 5. Proceedings on complaint.    | 14. Notice, how given thereon.   |
| 6. Surveyor's power to sell.    | 15. Form of warrant thereon.     |
| 7. Persons encumbering liable.  | 16. Other proceedings, what.     |
| 8. Encroachment, how removed.   | 17. Rights of public and owners. |
| 9. Public structures excepted.  | 18. "Public highway," what is.   |

1. If any person shall wantonly or illegally injure or damnify any highway, causeway or bridge, by destroying or taking away any of the plank, timbers, stone or other materials thereof, or by digging any pit therein for gravel or clay, or for any other purpose, he shall on conviction be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding six months. *R. S., ch. 58, sec. 1.*

2. Every person, so injuring or damnifying any highway or bridge, shall be liable to the town for all damage done to the same, and for all damages to which such town may be subjected by reason thereof. *Ibid., sec. 2.*

3. The surveyor of highways may remove any timber, lumber, stones or other thing whatever, placed or being in any highway or street to the encumbrance thereof. *R. S., ch. 59, sec. 1.* Previous to the enactment of the provisions embraced in this section it was decided that an individual could not remove an encumbrance unless it was in the travelled part of the road and impeded the travel. *4 N. H. R., 544*; but this and the next section, enacted since that decision, prescribes a new remedy, and give new powers. A surveyor has no power, however, in the cases mentioned in section 8.

4. Such surveyor may, if he choose, give reasonable notice to the owner, or person leaving any such encumbrance, to remove the same; and upon their neglect or refusal to remove the same, or if they are unknown, he may make complaint thereof to a justice of the peace. *Ibid., sec. 2.*

The form of such notice may be thus:

*To Amos Brown, of Stoddard:*

You are hereby ordered to remove a pile of boards left by you in the highway near your house in said Stoddard, without delay, as said highway is encumbered thereby.

JOHN WILSON, *Surveyor of highways for district No. 3.*

Stoddard, June 1, 1843.

5. Such justice shall cause notice to be given to the owner, or person leaving the same, if known, of the time appointed by him to view such encumbrance; and after hearing such party may, upon his own view, issue his warrant to the surveyor to remove the same, so far as he shall judge necessary for the public convenience, and to sell so much thereof as may be necessary to pay the legal costs taxed by him, and three times the price of the labor of removing the same, to be estimated by such justice. *Ibid.*, sec. 3.

6. The surveyor shall have the same power and be governed by the same rules, in making such sale, as collectors of taxes in the sale of property distrained by them; and if the proceeds of such sale shall be insufficient to pay the sums specified in such warrant, the surveyor may recover the balance unpaid, by action on the case against the person leaving the same. *Ibid.*, sec. 4. See chapters 23 and 26.

7. If any person shall place in any highway or street any timber, lumber, stones or other thing whatever, to the encumbrance or obstruction thereof, he shall be liable to the town for all damages and costs which said town shall be compelled to pay to any person who has sustained damage by reason of such encumbrance or obstruction. *Ibid.*, sec. 5.

8. If any building, structure or fence, shall be erected or continued upon or over any highway, street or alley, so as to obstruct the same, or lessen the full breadth thereof, it shall be deemed a public nuisance; and any person erecting or continuing the same shall be punished by fine not exceeding fifty dollars, and costs of prosecution; and the court shall order and cause such building, structure or fence to be taken down or removed. *R. S.*, ch. 60, sec. 1.

This section relates to encroachments upon any part of the road, and is not confined to the travelled part, as in case of encumbrances. 16 *Pick. R.*, 175.

9. The foregoing section shall not be construed to pro-

hibit the erection of any watch-house or structure for public use, by the selectmen of any town, or any sign or awning erected in conformity to the regulations established by the police officers. *Ibid.*, sec. 2.

10. The selectmen upon application may, by license recorded by the town-clerk, permit any person to keep a gate upon any highway leading across any meadow or intervale land liable to freshets, at a place therein designated, under such restrictions as they may judge proper; and they may at any time alter or revoke such license. *Ibid.*, sec. 3.

11. If any person shall think himself aggrieved by the grant of such license, he may apply by petition to the court of common pleas for redress, who shall cause such notice to be given to all persons concerned as they shall judge proper, and may affirm, alter or annul such license. *Ibid.*, sec. 4.

12. The form of the complaint in section 4 may be :

*To F. M., Esquire, one of the Justices of the Peace in and for the County of Cheshire, in the State of New-Hampshire.*

Complains John Wilson, surveyor of highways for district No. 3, in the town of Stoddard, in said county, that Amos Brown, of said Stoddard, yeoman, on the first day of June, eighteen hundred and forty-three, at said Stoddard, with force and arms in and upon the highway in said district leading from                      to                      , unlawfully and injuriously did place and put a large pile of boards, and said pile of boards so put and placed in said highway, from the said first day of June until the day of exhibiting this complaint, has unlawfully and injuriously permitted to be and remain in and upon said highway, and still does permit, to the great damage and common nuisance of all the citizens of said state having occasion to pass and repass in and along said highway, and against the peace and dignity of the state. And although your complainant on the said first day of June ordered the said Amos Brown to remove the said encumbrance, yet the said Amos Brown has wholly neglected to remove the same.

Wherefore your complainant prays the said justice, upon his own view of said encumbrance, by warrant under his hand and seal, directed to your said complainant, to cause said encumbrance to be immediately removed so far as said jus-

tice may think necessary for the public good, and to order so many of the said boards to be sold as the said justice may judge necessary to pay the legal cost, and three times the price of the labor of removing the same.

JOHN WILSON.

Stoddard, June 4, 1843.

CHESHIRE ss., *June 4, 1843.* Then the said John Wilson made oath that the foregoing complaint by him signed is in his belief true. Before me,

F. M., *Justice of the Peace.*

If the person leaving the encumbrance is unknown, omit the words, "Amos Brown, of said Stoddard, yeoman," and insert instead—*some person to your complainant unknown*; also omit all the sentence between "dignity of the state," and "wherefore."

13. The order of notice on such complaint may be :

CHESHIRE ss. Upon the foregoing complaint, it is ordered that the said Amos Brown shew cause, at the dwelling house of the subscriber, in Stoddard, in said county, on the sixth day of June instant, at one o'clock in the afternoon, why the said encumbrance should not be removed.

F. M., *Justice of the Peace.*

14. Notice of the time and place of hearing must be given to the party complained against, if known, by giving to him in person, or leaving at his usual place of abode a reasonable time before the time of hearing, a copy of the complaint and order thereon, attested thus—A true copy of the original : D. W. ; and an affidavit of service should be made on the back of the original complaint.

15. At the time and place appointed the justice should attend, and after hearing all the evidence and arguments offered, if he thinks it an encumbrance which ought to be removed, should tax the costs, and estimate the expense of removal, and issue his warrant in the form following :

STATE OF NEW-HAMPSHIRE.

CHESHIRE ss. *To JOHN WILSON, Surveyor of Highways for district No. 3, in the town of Stoddard, in said County.*



Whereas complaint has been made to me, F. M., one of



the justices of the peace in and for said county, as follows : "Complains John Wilson, surveyor of highways for district No. 3, in the town of Stoddard, in said county, that Amos Brown," (here insert the whole complaint.) And the said Amos Brown having been duly notified to appear before me and shew cause, if any he had, why said timber should not be removed, and the said Amos Brown not showing sufficient cause, (or *not appearing*,) and it appearing to me, the said justice, upon my own view of the same, that it is necessary for the public good that the boards described in said complaint be removed, I do hereby order you forthwith to remove said boards from the highway aforesaid, so that no part of the same may in any way impede or hinder those who may have occasion to travel upon said highway.

And you are also ordered to sell so many of said boards as may be necessary to pay the legal costs upon the said complaint, taxed by me at \_\_\_\_\_, and also the sum of three dollars, being three times the price of the labor of removing said boards, as estimated by me.

And you are to keep such part of said boards as it may be necessary to sell, four days, unless the sums aforesaid shall be sooner paid; and if said sums are not paid within said four days you are to post up in two or more public places in the town, twenty-four hours at least before the time of sale, a notice of the place, day and hour of the sale, with a particular description of the property to be sold. Such sale shall be in this town, within forty-eight hours after the expiration of said four days, and between the hours of ten in the forenoon and six in the afternoon, and you are then and there required to sell at public auction to the highest bidder so many of said boards as may be necessary to pay said sums. And you are, immediately after said sale, to deliver, or have ready to deliver on request to the owner, a particular account in writing of the sums aforesaid, and the amount of the sale of each article of the property sold.

Herein fail not. Given under my hand and seal, this sixth day of June, eighteen hundred forty-three.

F. M., *Justice of the Peace.*

16. For forms and directions in such sale, see chapters 23 and 26.

If the owner is unknown, the words from, "And the said Amos Brown," down to "or not appearing," inclusive, should be omitted.



17. "In highways laid out through the lands of individuals, the public has only an easement, or right of passage; the soil and freehold remain in the individual whose lands have been taken for that purpose." 1 *N. H. R.*, 16; 4 *N. H. R.*, 37, 513.

"The owner of the soil of a highway may use it in any way which is not inconsistent with the public convenience. Highways may be lawfully used for other purposes than mere passage. Trees are often left growing, boards, plank, timber, wood and various instruments of husbandry are left, and heaps of manure are collected within the limits of highways. But they are not nuisances unless so situated as to obstruct the passage." 4 *N. H. R.*, 525.

But no person except the owner has a right to pasture it—4 *N. H. R.*, 514; or to plough it, except for repairing it—1 *Pick. R.*, 122; or to cut the grass growing on it—6 *Pick. R.*, 57.

18. But no road is "a public highway," within the provisions of this chapter, unless it has been legally laid out, or used as such twenty years. See *ch. 34, sec. 7*. "Highways" include the bridges thereon. *R. S., ch. 1, sec. 21*.

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## CHAPTER 36.

### OF BRIDGES, RAIL-ROADS, GUIDE-BOARDS AND THE LAW OF THE ROAD.

- |                                     |   |
|-------------------------------------|---|
| 1. Bridge, penalty for injuring.    | 9. Limitation of complaints.            |
| 2. By-laws for toll bridges made.   | 10. Limitation of action.               |
| 3. Notice thereof to be posted.     | 11. Law applies to <i>streets</i> also. |
| 4. Guide-posts to be erected.       | 12. "Travelled part," meaning of.       |
| 5. Penalty for neglect.             | 13. Liability of travellers.            |
| 6. Penalty for injury to.           | 14. Rail-road crossings regulated.      |
| 7. Travellers to turn to the right. | 15. Penalty for neglect to obey.        |
| 8. Penalty for neglect so to do.    |   |

1. Any town at a legal meeting may establish by-laws to

prevent any person from wilfully riding or driving at a rate faster than a walk over any bridge in such town which shall have cost one thousand dollars or more, and annex penalties not exceeding one dollar for the breach thereof, to be recovered in the name and for the use of the town. *R. S., ch. 61, sec. 1.*

2. The proprietors of any toll bridge may make by-laws to prevent any person from riding or driving over such bridge at a rate faster than a walk, and annex penalties not exceeding two dollars for the breach thereof, to be recovered by the corporation for its own use. *R. S., ch. 61, sec. 2.*

3. No such by-law shall be in force unless such town or corporation shall cause to be posted and kept up, in some conspicuous place, at each end of said bridge, a board painted with a white ground, containing, in black letters, the substance of such by-laws. *R. S., ch. 61, sec. 3.*

4. Every town shall erect and keep in repair suitable guide-posts or guide-boards, at the intersection of all public highways, on which shall be distinctly and legibly marked the name of the next town, and such other towns as the selectmen may think proper, and the distance in miles to the same, with an index pointing towards the places to which such roads lead. *R. S., ch. 62, sec. 1.*

5. If any town shall neglect to erect or keep in repair such guide-post, or guide-board, at each intersection of the highways therein, they shall forfeit for each month's neglect the sum of one dollar, to be recovered by action by any person who will sue for the same, for his own use. *R. S., ch. 62, sec. 2.*

6. If any person shall throw down, destroy or deface any such guide-post, guide-board or its appendages, or the letters or figures thereon, or aid or assist therein, he shall, on conviction upon complaint before any justice of the peace, be punished by fine not exceeding ten dollars, for the use of the town. *R. S., ch. 62, sec. 3.*

7. Every person travelling with any carriage or other vehicle, who shall meet any other person so travelling on any highway or bridge, shall seasonably drive his carriage or vehicle to the right of the centre of the travelled part of the road, so as to enable such person to pass with his carriage or vehicle without interference or interruption. *R. S., ch. 63, sec. 1.*

8. Every person who shall offend against the provisions

of the preceding section shall, upon complaint before a justice of the peace, be punished by fine not less than one dollar nor more than twelve dollars, and shall be liable for all damages sustained in consequence of any neglect to comply with said provisions. *R. S., ch. 63, sec. 2.*

9. No complaint for any offence prohibited by this chapter shall be sustained unless made by the party aggrieved, or by some person authorized by him, within ninety days after such offence is committed. *R. S., ch. 63, sec. 3.*

10. No action for damages sustained by reason of any violation of this chapter shall be supported, unless it shall be commenced within one year after the cause of action accrued. *R. S., ch. 63, sec. 4.*

11. The law of the road applies to the streets of populous villages as well as to other highways, and a person driving a carriage across the head of a street must see that he does not interfere with others in the proper exercise of their right of passing. *1 Pick. R., 344.*

12. By "*the travelled part*" of a road is intended that part which is usually wrought for travelling—not the centre of the track made by carriages. *4 Pick. R., 126.*

13. If a man travels on the left side of the road, or across it for the purpose of turning up to a house on that side, he must not interfere with another person lawfully passing on that side; if he does he acts at his peril, and is answerable for damages. *2 Fairfield R., 339.*

14. If any rail-road shall intersect or cross any highway in any town in this state, such town may, at any legal town meeting, direct that such place of crossing or intersection shall be secured by a bridge over said road, or by the erection of gates on both sides of said highway, as the town may think expedient. *R. S., ch. 142, sec. 4.*

The town may require a bridge or gates, but not both. An article should be inserted in the warrant for the meeting in relation to the subject. The *name* of the rail-road should be correctly described in the vote.

15. If after due notice given of such vote to the clerk of such rail-road corporation, such corporation shall neglect for the space of six months to erect and complete, to the satisfaction of the selectmen of such town, such bridge or gates, according to the vote of the town as aforesaid, the selectmen may remove or cause to be removed the rails from such rail-road where it crosses such public highway,

and no engine or car shall be permitted to run across such highway, until the vote of the town shall be complied with.  
*Ibid.*, sec. 5.

Notice of such vote may be given by giving to the clerk, or leaving at his usual place of abode, a copy of the vote, signed and attested by the town-clerk. A copy should be preserved, and the return of service made thereon. Before the selectmen take up the rails they should again give notice to the agent or engineers, so that the lives of passengers may not be endangered.

# TITLE V.

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## OF SCHOOLS.

CHAPTER 37. Of the creation, division and powers of school districts.

CHAPTER 38. Of the meetings and officers of school districts.

CHAPTER 39. Of school houses.

CHAPTER 40. Of school taxes and school money.

CHAPTER 41. Of the regulation, instruction and inspection of schools.

CHAPTER 42. Of schools in the town of Portsmouth.

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## CHAPTER 37.

### OF THE CREATION, DIVISION AND POWERS OF SCHOOL DISTRICTS.

- |                                      |   |
|--------------------------------------|---|
| 1. Town, how divided into districts. | 11. Executions against districts.                           |
| 2. Limits, how defined and altered.  | 12. Forms and proceedings in districting the town.          |
| 3. Selectmen may district, when.     | 13. Application to selectmen to district the town.          |
| 4. District is a corporation.        | 14. Application for appraisal of property, and proceedings. |
| 5. Town not divided, how liable.     | 15. Union of school districts.                              |
| 6. Penalty for neglect to district.  | 16. Inhabitants may be witnesses.                           |
| 7. Property appraised on division.   | 17. Vote to raise money, when void.                         |
| 8. Allowance to be made, when.       | 18. Evidence of acts of district.                           |
| 9. Districts may unite, when.        | 19. Powers of school districts.                             |
| 10. Powers in case of union.         |   |

1. Every town shall be divided by metes and bounds into so many districts as the public good requires, which



shall be distinguished by suitable boundaries, and include all the territory of the town. *R. S., ch. 69, sec. 1.*

It is the duty of the selectmen to see that this is done forthwith, if it has not been done already, and to insert an article in the warrant for a town meeting for that purpose. The limits of the district must not be described by the names of the inhabitants of the district, but should be bounded by lines and monuments, as in a deed of land.

2. At any legal meeting for that purpose such division may be made by vote of the town, and the limits of such districts defined, and from time to time altered as convenience may require, a record of which shall be made. *Ibid., sec. 2.*

3. If any town shall neglect so to divide itself into school districts, the selectmen, on application in writing by ten legal voters, shall forthwith divide the town into districts, define their boundaries, and cause a record thereof to be made by the town-clerk within thirty days after such application. The town of Newington is exempted from this section. *Ibid., sec. 3.*

4. Every school district shall be a body politic and corporate, and may sue and be sued, take, hold, manage and convey real and personal property for the use of the district, and make and enforce all necessary contracts in relation thereto. *R. S., ch. 70, sec. 1.*

The rights and powers of a school district within its limits, and for school purposes, the right to the property of the district when divided, and the power to hold property, are similar to those of towns for town purposes. See *chapter 1*. It may, by its treasurer or prudential committee, hold property as a fund for the benefit of the district school, and may require a bond for its safe keeping and payment. Districts are now by the Revised Statutes made public *corporations*, and are entitled to the rights and subject to the liabilities of such corporations.

5. Any town not divided as aforesaid shall be considered, when necessary, as one district, and shall be entitled to all the rights, and subject to all the duties and liabilities of a town and of a district respectively. *R. S., ch. 69, sec. 4.*

6. If the selectmen of any town shall neglect, for six months after application made, to make a division as aforesaid, they shall forfeit a sum not exceeding one hundred dollars. *Ibid., sec. 5.*

7. When a new district is formed from one or more districts, the selectmen, upon the petition of a majority of the legal voters of such new district, shall appraise all the property belonging to, and all the debts due by each district so divided. *Ibid.*, sec. 6.

8. If the property exceed the debts the selectmen shall assess upon the polls and rateable estate of that part of the district retaining such property, a reasonable sum, not exceeding the proportion of the excess which the polls and rateable estates of the parts of the districts so divided bear to each other, and shall assess and collect the same in the same manner as school-house taxes, and cause the same to be paid over and applied for the use of such new district. *Ibid.*, sec. 7.

9. Two or more contiguous districts, in adjoining towns, may, upon such terms as they shall think proper, unite in the support of schools, to be kept from year to year, so long as they agree, within either of such towns, for the common benefit of such districts; and it shall be lawful for the prudential committees of such districts, so long as such union exists, to expend in the support of said schools the proportion of school money assigned to their respective districts by the selectmen of their respective towns. *Ibid.*, sec. 8.

10. Each of the districts so uniting shall maintain its separate organization, and may raise money to build, repair, alter, remove or furnish a school-house and other necessary buildings for their common use, although the same be not built within the district raising the money; and the money so raised shall be assessed and collected in the same manner as though it had been raised to build a school-house within such district. *Ibid.*, sec. 9.

11. When an execution shall issue against any school district, a copy thereof shall be left with one of the selectmen of the town; and the selectmen shall assess the inhabitants of such district in a sum sufficient to satisfy the same, and shall have the same authority in the collection thereof that they now have in the collection of town taxes. *R. S.*, ch. 70, sec. 2.

12. The form of the article in the warrant relative to dividing the town into school districts may be:

To see if the town will divide its territory into school districts, and if so, into how many, and define their bounds; or,

To see if the town will alter the boundaries of any of the

school districts in the town, or make any new districts, and fix their bounds.

The form of the vote of the town making a division may be :

*Voted*, that the territory of this town be divided into nine school districts, to be bounded and called as follows :

School district No. 1 is bounded thus: Beginning at the north-east corner of the homestead farm of A. B., at the highway leading from C. to D.; thence southerly by said highway, about one mile, to the south-east corner of the farm of S. H.; thence westerly by the southerly line of the farms of said S. H., N. O. and D. P. to the south corner of the homestead farm of said D. P.; thence northerly by the westerly line of the farms of said D. P., N. L. and T. D., to the northwesterly corner of the farm of said T. D.; thence easterly by the northerly lines of the farms of T. D., P. R. and A. B. to the first bound, and comprising all the territory within said limits. School district No. 2 is bounded, &c.

The town may vote to authorize the selectmen to divide it into school districts, but such division will not be legal until it is accepted by the town at some legal meeting for the purpose, an article therefor being inserted in the warrant. In such case the selectmen act as a committee, and their doings must be ratified by the town. 3 *N. H. R.*, 168.

13. The form of the application to the selectmen, on the neglect of the town in section 3, may be :

*To the Selectmen of the town of H.*

Whereas the town of H. has neglected to divide itself into school districts, according to the law in such case made and provided, we the subscribers, legal voters of said town, hereby request you forthwith to divide said town into convenient school districts, define their boundaries, and cause a record thereof to be made by the town-clerk according to law.

A. B., &c. &c.

*H* , April 1, 1843.

As the selectmen are not authorized to make such division except upon the "neglect" of the town, and as the town can act only at a legal meeting, called *by the selectmen*, it will be more prudent, if not necessary, for the selectmen, before making such division, to call a town meeting for the purpose. If the town refuse to district, the selectmen may

then safely proceed. No notice need be given, (though it might be well to give notice,) but the selectmen should make the division immediately, describing each district "by metes and bounds," sign it, and cause it to be recorded by the town-clerk together with the application. The record should be attested by the town-clerk as a true copy. The form of the return may be the same as in the preceding section, omitting the word "*voted*," and saying instead—

Upon the foregoing application, the subscribers, selectmen of the town of H., said town having neglected to divide itself into school districts according to law, do order —.

14. The form of the application for an appraisal of property and debts, as in section 7, may be :

*To the Selectmen of the town of H.*

The undersigned, a majority of the legal voters in school district No. 3, in said town of H., respectfully represent that said school district No. 3 is a new district, formed from school districts Nos. 2 and 6 in said town, by a vote of said town; that said school districts No. 2 and No. 6 are possessed of school houses and other property, belonging to said districts at and before the division thereof, and while said district No. 3 was a part thereof, for which said district No. 3 has received no compensation: We therefore request you to examine and appraise all the property belonging to, and all the debts due by said districts Nos. 2 and 6 respectively at the date of the formation of said district No. 3, and to award a reasonable sum therefor to said district No. 3, and cause the same to be assessed, collected and paid over to said district according to the law in such case made and provided.

A. B., &c. &c.

H , April 10, 1843.

Upon this application the selectmen should appoint a time and place of hearing, the form of which may be thus :

Upon the foregoing application it is ordered that a hearing thereon be had at the dwelling-house of A. B., in said town, on the twenty-fifth day of April instant, and that notice thereof be given to said school districts Nos. 2, 3 and 6, by giving to the clerk of each of said districts in hand, or leaving at his usual place of abode, an attested copy of this application and order of notice thereon, ten days at least before said day of hearing.

N. D. } Selectmen  
H. P. } of  
J. L. } H——.

H , April 12, 1843.



Service of this notice may be made by any person, although an inhabitant of the district. The copies should be accurately made and examined, and attested by the person making the service, thus:

A true copy.

Attest: THOMAS SMITH.

At the time and place of hearing, the person making such service should return the original to the selectmen, with a return thereon as follows:

H, April 13, 1843. This day I gave to N. L., clerk of school district No. 2, and to R. S., clerk of school district No. 6, in said town, to each a true and attested copy of the within application and order of notice thereon, and I left at the dwelling house of C. P., clerk of said school district No. 3, being his usual place of abode, a like copy.

THOMAS SMITH.

MERRIMACK SS., April 25, 1843. Then the said Thomas Smith appeared, and made oath that the above return by him signed is true. Before me.

C. P., *Justice of the Peace.*

The selectmen should examine all the property and debts, hear all the evidence and arguments offered, take all the circumstances into consideration, and award such sum, if any, as they think justice requires. The application, order of notice, affidavit of notice and the award, should all be recorded by the town-clerk in the town records. The form of the award may be:

We the subscribers, selectmen of the town of H., having met the parties at the time and place, and for the purposes mentioned in the foregoing application and order of notice thereon, due notice thereof having been given to all of said parties, and having attentively examined and appraised all the property belonging to, and all the debts due by, each of said school districts No. 2 and No. 6 respectively, and heard all the evidence and arguments offered thereupon, do determine as follows:

We appraise the property belonging to district No. 2 at the sum of            dollars, and the debts due by said district at the sum of            dollars; and we order that said district pay to school district No. 3 aforesaid            dollars, within sixty days.

We appraise the property belonging to district No. 6 at



the sum of            dollars, and no debts are due by said district to our knowledge. We order that said district pay to school district No. 3 aforesaid the sum of            dollars, within sixty days.

Given under our hands this twenty-fifth day of April, A. D., 1843.

N. D. } *Selectmen*  
H. P. } *of*  
J. L. } *H—*.

15. The union of school districts, authorized by sec. 9, must be made by a vote of each district, at some meeting in the warrant for which an article for that purpose was inserted. The districts must not be in the same town. The form of the article for that purpose may be :

To see if this district will unite with school district No. 7, in G., for the purpose of schooling, and if so upon what terms, and to take measures to carry the same into effect.

The form of the vote may be as follows :

*Voted*, that this district do unite with school district No. 7, in the town of G., for the support of schools in our united districts, and that the prudential committee of this district be a committee to agree with said district upon the terms of union.

*Voted*, that this meeting stand adjourned four weeks, to hear and act on the report of said committee.

The committees so appointed having agreed upon the terms of union, should make a written report of the terms to the districts, and such reports being accepted by vote of each district, and recorded by the clerk, will make the union legal.

16. The inhabitants of public corporations are competent witnesses in any case affecting the interests of such corporation. *R. S., ch. 188, sec. 12.* A school district is such a "public corporation."

17. A vote to raise money by a school district whose limits have not been defined by a legal vote of the district (or by the selectmen according to law,) is void ; and a warrant from the selectmen to the collector to collect the money, is no protection to him : if he collects the money by distress, he will be a trespasser. 4 *N. H. R.*, 478.

18. The only legal evidence to prove the doings of a school district meeting is the record itself, or a copy attested

by the clerk ; parol testimony is not admissible. 4 *Greenleaf R.*, 44.

19. The powers of school districts are special and limited, and are such only as are expressly given by statute, or necessarily result from such granted powers. 3 *Fairfield R.*, 258. If they undertake to do any act not within said powers, it is illegal and void—*Ibid.* ; but may raise money (in Maine,) to defray the expenses of a lawsuit in which they are involved—*Ibid.* ; but not to build a second school-house if the district has one good one already. *Ibid.*

## CHAPTER 38.

### OF THE MEETINGS AND OFFICERS OF SCHOOL DISTRICTS.

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|--|---|
| 1. Annual meeting, how holden.                         | 14. Form of application to selectmen to call meeting. |
| 2. Special meetings, how called.                       | 15. Form of warrant by selectmen.                     |
| 3. Meetings warned by selectmen.                       | 16. Vacancy, application to fill.                     |
| 4. Who are voters in district.                         | 17. Vacancy, form of appointment.                     |
| 5. Officers of the district, what.                     | 18. Petition for removal, form.                       |
| 6. Clerk of district, his duties.                      | 19. Notice of removal, form.                          |
| 7. Vacancies, how filled.                              | 20. Service of notice, how made.                      |
| 8. Prudential committee, duties.                       | 21. Records of district, how made.                    |
| 9. Prudential committee, removal.                      | 22. Liability of district.                            |
| 10. Form of warrant for meeting.                       | 23. Liability of clerk.                               |
| 11. Proceedings in such case.                          | 24. Form of certificate of vote.                      |
| 12. Articles to be inserted.                           |   |
| 13. Form of application to committee, to call meeting. |   |

1. There shall be a meeting holden annually in the month of March, in each school district, (excepting in such towns as shall have adopted the provisions of the chapter relating to schools in Portsmouth,) and the prudential committee of the district shall warn the same, by posting up a notice signed

by such committee, stating the time, place and purposes of the meeting, at the door of the school-house, if there be any in the district, otherwise at one or more public places in the district, seven days at least prior thereto. *R. S., ch. 70, sec. 3.*

2. Special meetings may be called at any time in the same manner, except for raising money or building or repairing school-houses, in which case the notice shall be posted up fifteen days prior to the meeting, or given to each voter in hand, or left at his usual place of abode, at least ten days prior thereto. *Ibid., sec. 2.*

Special meetings may be called for any purpose. If called for the purpose of raising money or building or repairing the school-house, fifteen days' notice must be given, by posting up a warrant, or ten days' personal notice. For all other purposes no personal notice need be given, and ten days' posting up is sufficient.

3. If the prudential committee shall neglect to warn any such annual meeting by posting up the required notice prior to the fifteenth day of March, or shall neglect, for the space of ten days after application made in writing by three or more voters of the district, to call any such special meeting, the selectmen upon a like application shall call such annual or special meeting, by causing a like notice signed by them to be posted up, or served in the manner prescribed in the two preceding sections. *Ibid., sec. 5.*

The same notice is to be given by the selectmen, in warning an annual or special meeting, that is required of the prudential committee for a similar meeting.

4. Any person qualified to vote in town affairs may vote at any district meeting in the district in which he resides and has his home. *Ibid., sec. 6.*

As to who are legal voters, see *ch. 3, sec. 11.*

5. The officers of the district shall be a moderator, a clerk and a prudential committee not exceeding three, all of whom shall be legal voters in the district, and shall hold their offices until the next annual meeting, or until others are duly elected and qualified in their stead. *Ibid., sec. 7.*

6. The clerk, before entering upon the duties of his office, shall be sworn to the faithful performance thereof, which oath may be administered by the moderator, and shall be recorded. The clerk shall keep a true and perfect record of all the doings of each meeting, which shall be signed by

him ; shall deliver to the selectmen a certified copy of every vote to raise money, within ten days thereafter, and shall make and certify copies of any record, when required and payment therefor tendered. *Ibid.*, sec. 8.

The form of the oath may be the same as that administered to town officers (see *ch. 5, sec. 3*) and the record of the oath should be made in the record book of the district, and signed by the moderator. (See *ch. 5, secs. 10, 13.*)

A "*certified copy*" of a vote is a copy of the record of the meeting, made by the clerk, including his own name, and attested thus :

A true copy. Attest : G. R., *Clerk of said District.*

7. If any vacancy shall occur in the office of clerk or prudential committee, from neglect to choose, or any other cause, the selectmen, upon the application of one or more voters in such district, shall fill such vacancy ; and the officers thus appointed shall hold their offices until new ones are legally chosen and qualified, and shall possess all the powers and be subject to all the duties incident to said offices. *Ibid.*, sec. 9.

8. It shall be the duty of the prudential committee to select and hire teachers for the district, provide for their board, furnish necessary fuel, make such occasional repairs in the school-house and furniture as may be necessary, not exceeding in amount five per cent. of the school money for the district, notify the superintending school committee of the commencement of the summer and winter school, and give them all such information and assistance as may be necessary for the performance of their duties. *Ibid.*, sec. 10.

9. If any member of the prudential committee is incompetent, or irresponsible, or mismanages the affairs of the district, the selectmen, on the petition of one fourth of the legal voters of the district, may dismiss him from office, and cause him to be notified of such dismissal, by giving to him in hand or leaving at his usual place of abode in the district, a written notice thereof. *Ibid.*, sec. 11.

10. The form of the warrant for a school meeting, called by the prudential committee, may be :

*To the Legal Voters of School District No. 3, in the town of Nashville.*

You are hereby notified to meet at the school-house in said district, on Tuesday, the twenty-first day of March



instant, at seven o'clock in the afternoon, for the transaction of the following business :

I. To choose a moderator to preside in said meeting.

II. To choose a clerk, prudential committee, and other necessary officers for the ensuing year.

III. To see if the district will remove and fit up the present school-house, or build a new one, and fix upon a location for the same.

IV. To see if the district will sell the present school-house lot, and buy another lot, and raise money therefor.

Given under our hands at said Nashville, this fourth day of March, A. D., 1843.

A. E. T.	} <i>Prudential Com'tee</i> <i>of the District.</i>
J. R.	
C. J. F.	

The return of service on such warrant may be :

HILLSBOROUGH SS., *March 21, 1843.* This certifies that I posted up the within notice at the door of the school-house in said district, on the fifth day of March, 1843, and on the same day I posted up a like notice at the tavern of M. T., being one of the most public places in said district.

A. E. T.

The form of the affidavit may be :

HILLSBOROUGH SS., *March 23, 1843.* Then the said A. E. T. made oath that the above return by him signed is true.

Before me,

C. J. F., *Justice of the Peace.*

11. The warrant, return of notice and affidavit should be recorded by the clerk, and attested as a true copy of the original ; and the record of the proceedings of the meeting should be similar to that of the town-clerk in case of town meetings. See *chapters 2, 3, 4 and 5*, for general directions.

12. Articles should be inserted in the warrant specifying the subjects to be acted on at the meeting, as in the case of town meetings.

13. The form of an application to the prudential committee, to call a special meeting, may be as follows :

*To the Prudential Committee of School District No. 3, in the town of N.*

You are requested by the subscribers, legal voters of said district, to call a special meeting of the legal voters of



said district, and to insert in the warrant therefor an article in substance as follows, viz. :

To see if the district will vote to build a new school-house, or to repair the old one, and to raise money and take the necessary measures therefor.

A. B.

C. D.

E. F.

N , May 1, 1843.

The form of the warrant for such a meeting may be the same as for the annual meeting, and the application should be recorded by the clerk with the other papers and proceedings.

14. The form of the application to the selectmen, authorized by sec. 3, may be as follows :

*To the Selectmen of the town of N.*

Whereas on the first day of May, 1843, application was made to the prudential committee of school district No. 3, in said town, to call a meeting of the legal voters of said district, a copy of which application is as follows : (Here insert a copy of the application to the prudential committee, date and names of signers ; ) and whereas more than ten days have elapsed since said application was made, but no meeting of said district has been called by said committee :

We the subscribers, legal voters of said district, therefore request you to call a meeting of the legal voters of said school district as soon as may be, to act upon the subjects specified in said application.

A. B., C. D., &c., &c.

N , May 15, 1843.

If the prudential committee have neglected to post up a warrant for a meeting by the fifteenth day of March, the form of the application may be similar to the foregoing, omitting all from "*Whereas*" down to "*said committee*," and inserting instead—*Whereas* the prudential committee of school district No. 3 in said town, have neglected to warn the annual meeting in said district, by posting up a warrant therefor prior to the fifteenth day of March, and still neglect it : We the subscribers, &c.

15. The form of the warrant for a school meeting, issued by the selectmen, may be thus :

*To the Legal Voters of School District No. 3, in the town of N.*

By virtue of the authority in us vested by the laws of this state, you are hereby notified and warned to meet at the school house in said district, on Tuesday, the thirtieth day of May, 1843, at three o'clock in the afternoon, to act upon the following subjects :

1. To choose a moderator to preside in said meeting.

(Here insert the articles or subjects to be acted on.)

Given under our hands this fifteenth day of May, A. D., 1843.

A. B. } *Selectmen*  
C. D. } *of*  
E. F. } *N\_\_\_\_\_.*

The selectmen must see that this warrant is posted up (which may be done by any applicant or other person,) in the manner provided in *sections 1 and 2*; and the return of service, affidavit, proceedings at the meeting, and the record thereof, may be the same as if the meeting had been called by the prudential committee.

The form of the record may be :

At a meeting of the legal voters of school district No. 3, in the town of N., holden at the school-house in said district, on Tuesday, the thirtieth day of May, 1843, at three o'clock in the afternoon, pursuant to notice, C. D. was chosen moderator of said meeting.

Voted, &c. Attest : G. R., *Clerk of said District.*

16. The form of the application to the selectmen to fill a vacancy (see *sec. 7*) may be as follows :

*To the Selectmen of the town of N.*

Whereas a vacancy now exists in the office of clerk of school district No. 3, in said town, by reason of the death of C. H., late clerk of said district, we the subscribers, legal voters of said district, therefore request you to appoint some suitable person to be clerk of said district, according to the law in such case made and provided.

N , May 1, 1843.

T. D.  
G. P.

17. The form of the appointment in such case may be :

*To N. H., of N., in the County of Hillsborough.*

Whereas there is a vacancy in the office of clerk of

school district No. 3, in said town, and application has been made to us, selectmen of said town, by one or more legal voters of said district to fill said vacancy ; and whereas we have confidence in your capacity and fidelity, we do appoint you to be clerk of said school district, and upon your taking the oath of office and having the same recorded in the record-book of said district, you shall possess all the powers and be subject to all the liabilities incident to said office, until another clerk is legally chosen and qualified in your stead.

Given under our hands at N., this first day of May, 1843.

A. B.	}	<i>Selectmen</i> <i>of</i> N_____.
C. D.		
E. F.		

The application, appointment and oath of office should be recorded in the record-book of the district.

18. The form of the petition for the dismissal of a member of the prudential committee may be :

*To the Selectmen of the town of N.*

Whereas G. H., a member of the prudential committee of school district No. 2, in said town, is irresponsible, we the subscribers, being more than one fourth part of all the legal voters of said district, request you to dismiss said G. H. from his said office, and to cause him to be duly notified thereof; and we also request that you would appoint some suitable person to fill the vacancy occasioned thereby.

N \_\_\_\_\_, April 10, 1843.

N. G.

L. O., &c. &c.

If the member is *incompetent*, or *mismanages the affairs of the district*, omit the word "*irresponsible*," in the form, and insert instead the above words, as the case may be.

19. The form of the dismissal thereon may be :

*To G. H., one of the Prudential Committee of School District No. 2, in the town of N.*

Whereas application has been made to us, selectmen of said town, by more than one fourth part of the legal voters of said district, to dismiss you from your said office, for the reason that you are irresponsible ; and whereas we are satisfied of the truth of the statements in said application :

We therefore do, by virtue of the authority in us vested

by law, dismiss you from your said office, and do order that you no longer perform any duty therein.

Given under our hands at said N., this twelfth day of April, 1843.

A. B. } *Selectmen*  
C. D. } *of*  
E. F. } *N\_\_\_\_\_.*

If the dismissal is for any other cause except being *irresponsible*, the form of dismissal should be altered accordingly.

20. The original notice of dismissal should be given to the person dismissed, and a copy taken and preserved, upon which the return of service should be made thus :

HILLSBOROUGH SS., *N* \_\_\_\_\_, April 12, 1843. This day I gave to G. H., within named, in hand the original notice of which the within is a true copy. D. W.

The affidavit may be in common form.

The petition, order of dismissal, return of service and affidavit should all be recorded by the clerk of the district.

21. The record of the proceedings of every district meeting should be signed by the clerk ; a record not signed is of no avail. All papers recorded should be attested by him as true copies. For general directions, see the duties of town-clerks in *ch.* 4.

22. Contracts made by the prudential committee, which he is authorized by law to make, are the contracts of the district. The committee is a public agent, and not personally liable for any thing done in pursuance of his legal authority ; if not so authorized, he may make himself personally liable. 15 *Pick. R.*, 39.

23. The clerk is not liable for certifying to the selectmen the vote of the district to raise money, although the meeting was illegal. 17 *Pick. R.*, 208.

24. The form of a certificate of a vote raising money may be :

*To the Selectmen of the town of N.*

I hereby certify that at a legal meeting of the legal voters of school district No. 1 in said town, duly warned, and holden pursuant to notice at the school-house in said district, on the first day of May, 1843, the following vote was passed :

“ *Voted*, that the district raise the sum of four hundred dollars, for the purpose of building a school-house in said district.”

R. G., *Clerk of said District.*

## CHAPTER 39.

## OF SCHOOL HOUSES.

- |  |                                    |
|--|------------------------------------|
| 1. School houses, how erected, repaired and furnished. | 10. Petition of voter aggrieved.   |
| 2. If voters aggrieved, remedy.                        | 11. Committee appointed thereon.   |
| 3. Proceedings on complaint.                           | 12. Form of notice thereon.        |
| 4. Costs, how allowed in such case.                    | 13. Proceedings and report.        |
| 5. If district disagree on location.                   | 14. Proceedings under section 5.   |
| 6. If district destitute, remedy.                      | 15. Petition to lay out lot, form. |
| 7. If owner of lot selected refuses to sell, remedy.   | 16. Proceedings on such petition.  |
| 8. Proceedings in such case.                           | 17. Vote to raise money, legal.    |
| 9. School-house tax, how assessed.                     | 18. Assessment of such tax.        |
|  | 19. One school-house only.         |
|  | 20. Liability of voters for tax.   |
|  | 21. Power of town over district.   |

1. At any meeting, legally holden for the purpose, any district may vote to build, purchase, repair, alter or remove a school-house in and for such district, and other necessary buildings therefor, and to furnish the same with all necessary apparatus and furniture for the use of the school therein; may decide upon the location thereof, and purchase land therefor not exceeding half an acre; may choose committees with power to carry said votes into effect, and may raise money therefor. *R. S., ch. 71, sec. 1.*

The power of the district to "furnish" the school-house "with all *necessary apparatus and furniture*" is in terms new. All such *apparatus* as maps, globes and other contrivances for illustrating the studies pursued in the district school, may be "necessary," if the district so vote and direct their purchase.

2. If any three or more voters in such district are aggrieved by such location, they may apply by petition to the selectmen, who, if they think expedient, shall appoint a committee of three or five qualified voters of the town, not resident in the district, to examine and report thereon. *Ibid., sec. 2.*

3. Said committee shall appoint a time and place of hearing said petition, and shall notify one or more of said petitioners, and also the prudential committee or clerk of the district thereof; and after such hearing, their report thereon, signed by them, returned to the selectmen and recorded in the books



of the town, shall be binding upon said district as if such new location had been made by a vote of the district. *Ibid.*, sec. 3.

4. If such location is changed, costs shall be taxed by the committee in favor of the petitioners for the reasonable expenses of the committee and of the petitioners, which shall be paid by the district; if the location is not changed the expenses of the committee shall be paid by the petitioners. *Ibid.*, sec. 4.

5. If at any meeting the district do not agree upon a location for a school-house, the selectmen, upon the petition of three or more voters in the district, shall appoint a time and place of hearing thereon, notify one or more of the petitioners, and the prudential committee or clerk of the district thereof, and after such hearing, their report designating a location, which shall be recorded in the books of the town, shall be binding upon such district as if made by a vote thereof. *Ibid.*, sec. 5.

6. If any district is destitute of a school-house, or suffers the same to be out of repair, or shall be ordered to remove or fit up the same, or to raise any sum of money, or do any act required by law, and shall neglect so to build, repair, remove or fit up such school-house, or raise such sum, or do such act, the selectmen, upon the petition of three or more voters resident in the district, stating such facts, may assess and collect such sum of money as may be necessary, and cause such house to be built, removed, repaired or fitted up, such moneys to be expended, and such orders to be executed in such manner as they shall think expedient. *Ibid.*, sec. 6.

7. If a suitable place for the location of a school-house is designated in either of the ways aforesaid, and the owner shall refuse to sell the same for a reasonable price, the selectmen, upon petition therefor, may lay out said lot, not exceeding one eighth of an acre, for that purpose, and appraise the damages to the owner; and the proceedings thereon, and for obtaining increased damages in case the owner is dissatisfied, shall be the same as in case of a highway laid out by the selectmen. *Ibid.*, sec. 7. See *ch.* 28.

8. A record of the doings of the selectmen shall be made by them in the books of the town; and upon payment or tender of the damages so assessed by the selectmen, the land so laid out shall vest in said district, but shall revert to

the owner whenever the district shall vote to discontinue the use thereof, or shall neglect to use the same for two years successively. *Ibid.*, sec. 8.

9. For the purposes aforesaid, every person shall be taxed in the district in which he lives, for his poll and all the personal estate which he holds in the town; and all real estate in the town shall be taxed in the district in which it is. *Ibid.*, sec. 9.

In the assessment of school-house taxes, selectmen should pay particular regard to this section, as its provisions are new.

10. The form of a petition by persons aggrieved by the location of a school-house may be :

*To the Selectmen of the town of N.*

Whereas the school-house in school district No. 3, in said town, is so located as to be inconvenient and unjust to the subscribers, legal voters in said district, who are aggrieved thereby : we therefore request you to appoint a committee to examine and report upon the same, and to cause a new and more equitable location and record thereof to be made according to law.

N  
    , May 1, 1843.

N. D.

L. M., &c.

11. The appointment of a committee thereon may be :

*To L. B., J. N. and T. S., of N., in the County of H.*

Whereas application has been made to us, selectmen of the town of N., legal voters in school district No. 3, in said town, stating that they are aggrieved by the location of the school-house in said district, and requesting us to appoint a committee to examine and report thereon : Now we, reposing confidence in your judgment and integrity, do appoint you a committee for said purpose ; and you are to appoint a time and place of hearing, and notify said petitioners and district thereof, to examine said location, and hear the said parties, and make report to us thereon :

Given under our hands at N., this first day of May, 1843.

A. B. } *Selectmen*  
C. D. } *of*  
E. F. } *N——.*

12. The form of the notice thereon may be :

*To school district No. 3, in the town of N., and to all persons aggrieved by the location of the school-house in said district.*

Whereas we, the subscribers, have been appointed by the selectmen of said town, upon the application of three or more legal voters in said district, aggrieved by the location of the school-house therein, a committee to examine and report thereon; you are hereby notified that we shall meet for said purpose at the school-house in said district, on the tenth day of May instant, at nine o'clock in the forenoon, when and where you may attend, and you shall be heard.

Given under our hands this second day of May, 1843.

L. B. }  
J. N. } *Committee.*  
T. S. }

Two such notices should be made by the committee, one for the district and the other for the petitioners, and should be served by giving the originals and keeping a copy, upon which a return and affidavit may be made as in other cases.

13. At the time and place appointed, the committee should attend, examine the location of the house and the situation of the district, hear all the evidence offered, and make a written report to the selectmen, which should be annexed to their appointment. The form may be thus:

The subscribers, by virtue of the commission hereto annexed, appointed by the selectmen of the town of N. a committee to examine the location of the school-house in school district No. 3, in said town, and report whether the legal voters in said district are aggrieved thereby, having appointed the tenth day of May, 1843, at nine o'clock in the forenoon, at the school-house in said district, as the time and place of hearing thereon, and having caused the petitioners and also said district to be duly notified thereof, and having carefully examined said location, and the situation of said district, and heard all the evidence and arguments offered by both parties, and attentively considered the same, are of the opinion that said location ought not to be changed, and that said petitioners are not aggrieved thereby. And we further order that the costs of this hearing, taxed at , be paid by the petitioners. Witness our hands, this tenth day of May, 1843.

L. B. }  
J. N. } *Committee.*  
T. S. }

The petition, appointment, notice, return of service, affidavit and report of committee, should be all recorded in the books of the town by the town-clerk, and attested by him.

14. The proceedings under *sec. 5* are similar to those under *sec. 2*, and the forms above given for the latter may be easily changed, so as to be adapted to the former.

15. The form of a petition to lay out a school-house lot may be :

*To the Selectmen of the town of N.*

The subscribers, legal voters of school district No. 3, in said town, respectfully represent that said district, by a vote at a meeting legally called for that purpose, designated as a spot whereon to set their school-house a lot of land in said district, owned by T. G., and bounded thus: (Here insert the boundaries;) but the said T. G. refuses to sell said lot for a reasonable price: We therefore request you to lay out said lot, not exceeding one eighth of an acre, for the purpose of a school-house lot for said district, and to appraise the damages to the owner thereof, and to cause a record thereof to be made, according to the law in such cases made and provided.

L. B.

N           , May 1, 1843.

S. C., &c. &c.

16. The form of the notice on such petition may be :

Upon the foregoing petition it is ordered, that notice be given to the said T. G., and to said school district No. 3, to appear at the house of N. R., in said N., on Wednesday, the sixteenth day of May instant, at nine o'clock in the forenoon, and shew cause, if any they have, why the request of said petitioners should not be granted, by giving to said T. G. and to the clerk of said district in hand, or leaving at the usual place of abode of each, a true and attested copy of said petition and this order thereon, at least fourteen days previous to the said sixteenth day of May.

Given under our hands this first day of May, 1843.

A. B. } *Selectmen*  
C. D. } *of*  
E. F. } *N——.*

The certificate that notice has been duly given and the affidavit thereof should be made on the back of the order, as set forth in *ch. 28*.

The selectmen having met at the time and place appointed,

and having heard the parties and their evidence and arguments, if they find the statements in the petition to be sustained, may lay out the lot or a part of it, "not exceeding one eighth of an acre, and appraise the damages to the owner." The form of the laying out may be as follows :

Upon the foregoing petition the subscribers, selectmen of the town of N., having caused notice to be given as aforesaid to T. G., the owner of the land hereinafter mentioned, and to school district No. 3, in said town, to appear at the house of N. R., in said N., on Wednesday, the sixteenth day of May, 1843, at nine o'clock in the forenoon, to shew cause, if any they had, why the request of said petition should not be granted ; and having met at said time and place, and fully heard all persons who chose to attend and be heard, as well in regard to laying out said lot as to the damages to be awarded therefor, and having carefully considered said petition, and being satisfied that said school district No. 3 in said town did legally designate the lot described in said petition as and for a school-house lot for said district, and that said T. G., the owner thereof, refused to sell the same to said district for a reasonable price : We are of the opinion that said lot ought to be laid out, for the purpose of a school-house lot for said district, and do hereby for said purpose lay out the same, to be bounded thus : [Here insert the boundaries of the lot taken.] And we appraise the damages to the said T. G. of taking said lot as aforesaid at the sum of            dollars, which is to be paid by said district.

Given under our hands at N., this sixteenth day of May, in the year eighteen hundred forty-three.

A. B. } *Selectmen*  
C. D. } *of*  
E. F. } *N——.*

The petition, order of notice, affidavits and return of laying out should be recorded by the town-clerk, as in the case of a record of laying out a highway. For other directions, see *ch.* 28.

17. A vote by a school district "to raise a sum of money sufficient to remove the school-house in this district, and to purchase land to set the school-house upon," is legal, and after *this sum* is ascertained, by removing the school-house and purchasing the lot, the selectmen may assess it ; but



not until it is so ascertained. The safer course, however, is to raise a specific sum. 3 *N. H. R.*, 292.

18. The direction in the statutes requiring selectmen to assess a school-house tax within *thirty* days after notice, is merely directory ; the assessment will be legal if made after that time—3 *N. H. R.*, 328. And need not be made by the selectmen who were in office when the vote was passed—3 *Mass. R.*, 231. The selectmen are to limit the time for collecting and paying in the money voted, not the district—*Ibid.* If the selectmen to whom the certificate of such tax is given neglect to assess it, or assess it informally, upon a new certificate their successors may assess it ; no new vote is needed—*Ibid.* ; and if the selectmen make an erroneous assessment they may revoke it, and make a new one. *Ibid.*

A school district, after having voted to raise money, may, at a legal meeting called for the purpose, rescind the vote ; and the selectmen, upon receiving notice of such vote to rescind, by a certified copy, will have no power after such notice to make an assessment or to issue a warrant to collect it. 3 *Mass. R.*, 233.

19. If a district has a sufficient school-house, a vote to build another will be illegal. 3 *Fairfield R.*, 258.

20. If after a tax has been raised and assessed on the inhabitants of a school district, a part of the district is set off into another district, the inhabitants of such part remain liable to pay the tax, the debt being fixed by the assessment. 5 *Pick. R.*, 323. If a person has moved into the district after the invoice in April is taken, it is doubtful whether he is liable for a tax voted by the district, although he was an inhabitant when the vote to raise the money was passed—*Ibid.* ; and it is also probable that he is not liable, if he has removed from the district and ceased to be an inhabitant before such vote was passed.

21. In Massachusetts a town has no power to destroy a district without its consent, or so far to alter its limits as to effect the same object ; nor to annul or impair any contract made by the district, but only to alter limits as necessity requires. 5 *Pick. R.*, 323.

## CHAPTER 40.

## OF SCHOOL TAXES AND SCHOOL MONEY.

- |  |                                  |
|--|----------------------------------|
| 1. School tax, how assessed.                           | 9. Literary fund distributed.    |
| 2. Town may raise more.                                | 10. Unincorporated places, duty. |
| 3. School money appropriated.                          | 11. How to be appropriated.      |
| 4. School money, how assigned.                         | 12. Misappropriation, penalty.   |
| 5. Neglect of selectmen, penalty.                      | 13. Rail-road tax distributed.   |
| 6. Neglect of prudential committee to expend, penalty. | 14. District may hold property.  |
| 7. School, where to be kept.                           | 15. School tax, how assessed.    |
| 8. Towns, when exempted, how far.                      | 16. Money belongs to selectmen.  |

1. The selectmen of each town shall assess annually upon the polls and rateable estate by law taxable therein, a sum to be computed at the rate of one hundred dollars for every dollar of the public taxes appropriated to such town, and so for a greater or less sum. *R. S., ch. 72, sec. 1.*

2. The town, at any legal meeting for the purpose, may raise a sum exceeding the sum aforesaid, which shall be assessed in the same manner. *Ibid., sec. 2.*

3. Such sum when collected shall be appropriated to the sole purpose of keeping an English school or schools within such town, for teaching reading, writing, English grammar, arithmetic, geography, together with such other branches of English education as are adapted to the advancement of the school, including the purchase of necessary fuel for the school, and occasional repairs, as specified in this Title. *Ibid., sec. 3. See ch. 38, sec. 8.*

4. The selectmen shall assign to each district a proportion of the money thus assessed, according to the valuation of the district for the year, or in such other manner as the town at the annual meeting shall direct, and shall pay over the same to the prudential committee of the district. *Ibid., sec. 4.*

The district may require the prudential committee to give bond for the faithful discharge of his duties; and it would be prudent so to do, to avoid losses, especially if the district has a school fund.

5. If the selectmen of any town neglect to assess or assign, or pay over the school money as aforesaid, they shall forfeit and pay for each neglect a sum equal to that so neglected to be assessed or assigned, or paid over, which shall be for the use of the district aggrieved thereby, and may be recovered by action of debt in the name of such district, by the prudential committee. *Ibid.*, sec. 5.

6. If the money so assigned and paid over to the prudential committee of any district shall be by him not expended according to law, he shall forfeit for each offence a sum not less than the sum so unexpended or not expended legally, and not exceeding twice said sum, to be recovered by indictment, or by information, the cost to be paid to the county treasurer, and the penalty to be paid to the selectmen for the use of the district. *Ibid.*, sec. 6.

7. It shall be unlawful to keep the district school in any other place than in the school-house belonging to the district, unless there be no school-house, or the school-house be out of repair, or not of sufficient size to accommodate the school; in which cases the prudential committee may, with the consent and approbation of the selectmen, provide suitable rooms and conveniences for the use of the school at the expense of the district. *Ibid.*, sec. 7.

8. The town of Portsmouth and such other towns as legally adopt the provisions of the chapter of this Title made for the town of Portsmouth, are exempted from the operation of the foregoing provisions, so far as the same relate to the mode of appropriation and expenditure of said school money. *Ibid.*, sec. 8.

9. Every banking corporation in the state shall pay into the treasury, on or before the twentieth day of June annually, one half of one per cent. on the amount of the capital stock of the bank at that time, for a literary fund; and the treasurer shall assign and distribute, in the month of June annually, all sums so received by him among the several towns and places in the state, according to the then existing apportionment of the public taxes. *R. S.*, ch. 75, secs. 1, 4.

10. No unincorporated place shall receive such proportion until a treasurer or school agent shall have been chosen to receive and appropriate the same. *Ibid.*, sec. 5.

The proper evidence of the choice of an agent is a copy of the record of the town meeting at which he was chosen, certified and attested by the town-clerk.

11. The money received by any town or place as aforesaid shall be applied to the maintenance of common schools, or to other purposes of education, in addition to the sums required to be raised by law, and in such manner as the town shall direct. *Ibid.*, sec. 6.

12. If any town or incorporated place, or the agent of any unincorporated place, shall apply any sum of money so received to any other purpose than as aforesaid, the town, place or agent so offending shall forfeit and pay double the sum so misapplied, to be recovered by indictment for the use of the county. *Ibid.*, sec. 7.

13. The tax upon the stock of rail-road corporations, paid from the state treasury to the towns in which the stockholders live, is required "to be by the selectmen of the towns receiving the same (not by the town,) appropriated in just proportions to the several purposes for which taxes are assessed upon the polls and estates of such stockholders within such town." The selectmen should therefore appropriate a "just" share of such sum to the support of schools.

14. A district being now a corporation may take and hold property for the benefit of the school in the district. A gift of property to a district, the interest to be expended for the benefit of the school in addition to the school money, would be as useful an appropriation as a wealthy and patriotic man could desire.

15. All taxes for the year are required to be assessed upon the invoice made in April—*R. S.*, ch. 43, sec. 1; and no provision is made for taking an invoice at any other time. In making any assessment of a tax relating to school-houses, particular attention should be paid to the new provisions in ch. 39, sec. 9.

16. The school money assessed by the selectmen is not the money of the town, but of the selectmen, they being personally responsible for its proper appropriation; and so also is the money above what is required by law which is voted to be raised by the town. Even in the hands of the town

treasurer it is the money of the selectmen and not of the town. *3 N. H. R.*, 57. But if paid over to the district it ceases to be the property of the selectmen.

## CHAPTER 41.

### OF THE REGULATION, INSTRUCTION AND INSPECTION OF SCHOOLS.

- |  |   |
|--|---|
| 1. Superintending committee, how appointed.    | 10. Teacher not to be paid, unless.               |
| 2. Duties of such committee.                   | 11. Class books, how determined.                  |
| 3. Teachers unfit dismissed.                   | 12. Sectarian books prohibited.                   |
| 4. Unruly scholars dismissed.                  | 13. Poor children, how furnished.                 |
| 5. Inspection of schools dispensed with, when. | 14. Report of superintending committee, how made. |
| 6. Scholars may be classified.                 | 15. Compensation of committee.                    |
| 7. Where scholars may attend.                  | 16. Virtues to be inculcated.                     |
| 8. Masters to be examined.                     | 17. Dismissal of teachers, form.                  |
| 9. Mistresses to be examined.                  | 18. Form of certificates.                         |
|  | 19. Form of school report.                        |

1. Each town shall annually in the month of March elect by ballot a superintending school committee, consisting of not less than three nor more than five persons ; and whenever any town shall neglect to choose such committee as aforesaid, the selectmen, before the twentieth day of April, shall appoint said committee. *R. S.*, ch. 73, sec. 1.

This is a new provision. The committee must be elected *by ballot*, and must take the oath of office, like other town officers.

2. It shall be the duty of said committee to examine every person proposing to teach any district school in such town ; to visit and inspect every school, at least twice in each year ; to inquire into the regulation and discipline thereof, and suggest any necessary alterations ; to examine the proficien-



cy of the scholars, and to use their influence that all the youth of each district attend and profit by the school therein. *Ibid.*, sec. 2.

3. Such committee, upon the petition of the majority of the legal voters in any district, shall dismiss the teacher in such district, and shall dismiss every teacher who is unfit to teach, notwithstanding a certificate has been given; and such teacher shall be entitled to compensation until such dismission, but no longer. *Ibid.*, sec. 3.

The meaning of this section is probably this:

If a majority of the legal voters of the district petition to have the teacher dismissed, the superintending committee shall dismiss him forthwith, whether fit or unfit to teach; but if any teacher is unfit to teach, they shall dismiss him without any petition therefor.

4. Such committee may, upon application of the teacher or any inhabitant of the district, dismiss any scholar from the school who will not conform to the reasonable regulations of the school; and it shall be unlawful for such scholar to return to or remain in said school until restored by the teacher or by the superintending school committee. *Ibid.*, sec. 4.

5. Any town, at its annual meeting or at any adjournment thereof, or at any meeting specially called for that purpose, may vote to dispense with the services of the superintending school committee, so far as relates to the examination and inspection of schools. *Ibid.*, sec. 5.

This does not dispense with the examination of teachers, as without a certificate (*sec. 10*), no teacher is entitled to any compensation.

6. When the number of scholars in any district amounts to fifty or more, such district, at a meeting legally holden for that purpose, by a vote of three fourths of the legal voters present may divide said scholars into two or more divisions, according to age or acquirements, or both, and may direct under what teacher each division shall be instructed. *Ibid.*, sec. 6.

In order that it may appear on the records that the vote was adopted by a majority of *three fourths*, the whole number of "legal voters present" should be ascertained and

recorded by the clerk, and also the number of persons voting in favor. The record may be thus :

*Voted*, that the scholars in this district be divided into three divisions, according to their acquirements, each division to be under the care of one teacher, and that the prudential committee make such division and classification; the whole number of legal voters of the district present being forty, and thirty of said voters having voted in favor of such division.

7. No person shall have a right to send to, or receive any benefit from any school in a district in which he is not a resident, without the consent of such district. *Ibid.*, sec. 7.

8. No person shall be employed as a school master unless he is a citizen of the United States, and shall produce a certificate from the superintending school committee of the town where such school is to be kept, that he is well qualified to instruct youth in the various branches required to be taught in an English school in this state, and produce satisfactory evidence of his good moral character. *Ibid.*, sec. 8.

9. No person shall be employed as a school mistress unless she shall produce a certificate from the superintending school committee of the town where the school is to be kept, that she is suitably qualified to teach the English language grammatically, and the rudiments of arithmetic and geography, and shall produce satisfactory evidence of her good moral character. *Ibid.*, sec. 9.

10. The district shall be liable for the wages of the teacher and for all contracts lawfully made by the prudential committee; but no person shall receive any compensation for teaching a district school, without producing to the prudential committee the certificate by this chapter required. *Ibid.*, sec. 10.

11. The superintending school committee shall determine and direct the class books to be used in the district schools of the town; and the parents, masters or guardians of the scholars attending such schools shall supply said scholars with the books so directed to be used. *Ibid.*, sec. 11.

12. No book shall be directed to be used as a school book which is calculated to favor any particular religious or political sect or tenet. *Ibid.*, sec. 12.

13. If any poor child attending any district school is destitute of the necessary class books, the selectmen shall provide such books at the expense of the town, upon application therefor. *Ibid.*, sec. 13.

14. The superintending school committee shall make out annually a report, and present the same to the town at its annual meeting, stating the number of weeks which the public schools have been kept in each district in summer and in winter, and what portion thereof has been kept by male and what portion by female teachers; the whole number of scholars that have attended each school; the progress made in each school in the various branches of learning; the number of children between the ages of four and fourteen years in each district, that have not attended school therein; and the number of persons in each district between the ages of fourteen and twenty-one years who cannot read and write, with such suggestions as may be useful upon the management of schools, and the subject of education. *Ibid.*, sec. 14.

15. Such committee shall receive from the town a reasonable compensation for all services required by law to be performed by them. *Ibid.*, sec. 15.

16. It shall be the duty of all persons entrusted with or engaged in the instruction of the young, diligently to impress upon their minds the principles of piety and justice, a sacred regard to truth, love of country, humanity and benevolence; sobriety, industry and frugality; chastity, moderation and temperance; and all other virtues which are the ornament and support of human society, and to endeavor to lead them into a particular understanding of the tendency of all such virtues to preserve and perfect a republican form of government, to secure the blessings of liberty and to promote their future happiness, and the tendency of the opposite vices to degradation, ruin and slavery. *Ibid.*, sec. 16.

17. The form of a petition to dismiss a teacher may be thus:

*To the Superintending School Committee of the town of N.*

We the subscribers, a majority of all the legal voters in school district No. 3, in said town, respectfully request you forthwith to dismiss R. M., a teacher of the school in said district, as he is in our opinion not qualified to teach the same.

A. B.

N , December 5, 1843.

C. D., &c. &c.

The order of dismissal on such petition may be thus :

*To R. M., a teacher of the district school in school district  
No. 3, in the town of N.*

Whereas the majority of the legal voters in said district have petitioned us to dismiss you from your said situation, you are therefore dismissed therefrom, and will take notice that from and after the day on which you receive this notice your employment as a teacher in said school will cease.

G. H.	}	Superintending
L. C. B.		School Committee
E. S.		of N——.

N , December 6, 1843.

The form of a dismissal for *unfitness* may be thus :

*To R. M., a teacher of the school in school district No. 3,  
in the town of N.*

Whereas we have made examination of said school and of its management and instruction, and are satisfied that the scholars do not make suitable progress in their studies, and that you do not possess the requisite qualifications for a useful teacher of said school, you will therefore take notice, that from and after the day on which you receive this notice, your employment as a teacher in said school is at an end.

L. C. B.	}	Superintending
D. D. P.		School Committee
E. S.		of N——.

N , December 5, 1843.

18. The form of a certificate of qualifications may be :

*To whom it may concern:* This certifies that we have examined A. B., in respect to his qualifications to teach the various branches required to be taught by a schoolmaster (or mistress) in the district schools in this state, and are of opinion that he is qualified according to law.

Witness our hands this                      day of                      , 1843.

L. C. B.	}	Superintending
D. D. P.		School Committee
E. S.		of N——.

The form of a certificate of character may be thus :

*To whom it may concern:* 'This certifies that we have

been acquainted with the bearer, A. B., of this town, and that said A. B. is a person of good moral character.

N. B., L. H., &c.

19. The superintending committee, in making their annual report, will find it convenient to make a table, as a part of the report, something in the following form :

No. of district.	Term of school Summer and Winter.	Names of teachers.	Number of weeks, length of school.	No. between 4 and 14 years, who have not attended school.	Number who have attended school.	Whole number of scholars in district.	No. of persons be- tween 14 and 21 years, unable to read and write.
1	1st	Miss S. A. C.	16	13	27	40	0
	2d	Mr. R. K.	12	0	40		
2	1st	Miss C. R. G.	16	0	45	45	1
	2d	Mr. W. W.	9	9	36		

Other columns may be added, as, *amount of money assigned to each district, wages of teachers, number of males and number of females attending school, average attendance, number in each class, books, &c. &c.*

## CHAPTER 42.

### OF SCHOOLS IN THE TOWN OF PORTSMOUTH.

- |                                  |                                   |
|----------------------------------|-----------------------------------|
| 1. High schools to be kept.      | 9. Qualifications of teachers.    |
| 2. Prudential committee, choice. | 10. Class books, how determined.  |
| 3. Prudential committee, duty.   | 11. Money, how apportioned.       |
| 4. High school committee, what.  | 12. Town may raise more money.    |
| 5. High school committee, duty.  | 13. Neglect to assess, penalty.   |
| 6. Vacancies, how filled.        | 14. General school laws in force. |
| 7. Reports to be made by both.   | 15. This chapter adopted, how.    |
| 8. Scholars, how selected.       |                                   |

1. There shall be kept and maintained in the town of



Portsmouth, in addition to the district schools, at least two high schools, one for males and the other for females; in which shall be taught all the branches usually taught in an English grammar school, with such additional branches as the town may direct. *R. S., ch. 74, sec. 1.*

2. The prudential committee of each district shall consist of three or more persons, to be chosen by ballot by the district, the first named of whom shall be chairman, and to hold their office until the next annual meeting, and until others are chosen and qualified in their stead. *Ibid., sec. 2.*

3. They shall perform all the duties of the superintending school committee as well as of a prudential committee, except as is hereinafter specified, and shall determine and direct what class-books shall be used in their respective district schools, which shall be furnished by the parents, master or guardian of any child attending said school. *Ibid., sec. 3.*

4. The several chairmen of the prudential committees shall constitute a board for the superintendence of the high schools aforesaid, to be called the high school committee. *Ibid., sec. 4.*

5. They shall examine and contract with the teachers of the high schools, fix and pay their salaries, provide all necessary fuel and apparatus for the schools, receive and appropriate the money assigned to such schools, regulate the admission of scholars, prescribe the class-books to be used, and transact all other business relating to the government of said schools. *Ibid., sec. 5.*

6. If there shall be a vacancy in either of said committees, either from neglect to choose, or any other cause, the selectmen shall immediately fill such vacancy. *Ibid., sec. 6.*

7. Each prudential committee and the high school committee shall annually, on or before the first day of March, make a report of their doings to the selectmen, containing an account of their receipts and expenditures for the year, the number of schools under their control, the number of pupils of each sex belonging to each school, the average number of each sex attending school, their ages, the various branches of study taught in each school, and the number of scholars in each branch, and such other matters as may serve to present a general view of the condition of each school; and the selectmen shall lay such reports before the town at its annual meeting. *Ibid., sec. 7.*

8. Said high schools shall be for the common benefit of all the districts of said town, and each district may send an equal proportion of scholars, possessing the requisite qualifications, to each of the high schools, under such regulations as may from time to time be established by the high school committee, and this proportion shall be determined as nearly as may be by the number of pupils attending school in each district. *Ibid.*, sec. 8.

9. No person shall be employed as a teacher in either of said high schools who is not qualified to teach English grammar, book-keeping, geometry, surveying, navigation, mensuration, algebra, astronomy and natural history, besides the qualifications required of teachers of district schools. The town or the high school committee may require such additional qualifications as they shall think expedient. *Ibid.*, sec. 9.

10. The high school committee shall determine and direct what class books shall be used in the several high schools, which shall be furnished by the parents, master or guardian of every child attending said schools. *Ibid.*, sec. 10.

11. The selectmen shall annually assign and pay over to the high school committee such portion of the school money as they shall think sufficient for the support of said schools, or as the town shall direct; and shall assign and pay over the balance to the several district committees, as nearly as may be in proportion to the number of scholars in each district respectively. *Ibid.*, sec. 11.

12. Said town, at its annual meeting, or at any meeting called for that purpose, shall raise so much money as is necessary for erecting, enlarging, repairing, purchasing, removing or hiring school-houses and other buildings for the accommodation of schools therein, with necessary furniture and apparatus, and the selectmen shall assess such sum upon the polls and rateable estates within the town, and shall cause the same to be collected like other town taxes, and shall appropriate the same for the purposes for which it was raised. *Ibid.*, sec. 12.

13. If the selectmen shall neglect to assess, collect, apportion, pay over or appropriate any sum of money in the manner prescribed by law, or if either of the committees aforesaid shall neglect so to appropriate, or shall misappropriate the same, the person so offending shall be liable to the

same penalty provided in case of neglect of selectmen to assess and apportion school money. *Ibid.*, sec. 13.

14. All the provisions contained in the general laws of this state relating to schools, shall be in force in the town of Portsmouth, except so far as the same are herein modified or rescinded. *Ibid.*, sec. 14.

15. Any town, at its annual meeting, or at any meeting lawfully called for the purpose, may adopt the provisions of this chapter, which shall then extend and apply to such town as fully as to the town of Portsmouth. *Ibid.*, sec. 15.

## TITLE VI.

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### OF PAUPERS AND THE PREVENTION OF PAUPERISM.

- CHAPTER 43. Of the settlement of paupers.  
CHAPTER 44. Of the support and disposal of paupers.  
CHAPTER 45. Of paupers not chargeable to any town or person in this state.  
CHAPTER 46. Of the maintenance of bastards.  
CHAPTER 47. Of the guardianship of spendthrifts and insane persons.  
CHAPTER 48. Of the duty of selectmen relative to apprentices and insane persons.
- 

### CHAPTER 43.

#### OF THE SETTLEMENT OF PAUPERS.

- |                             |   |
|-----------------------------|---|
| 1. Settlements, how gained. | 2. No settlement by birth, unless.                  |
| I. By marriage.             | 3. Nor unless under an act since December 31, 1795. |
| II. By legitimate birth.    | 4. Settlements, when lost.                          |
| III. By illegitimate birth. | 5. Settlements, how changed by law.                 |
| IV. By taxation.            | 6. Acts of January 1, 1796, and December 25, 1816.  |
| V. By admission or office.  | 7. Act of December 16, 1828.                        |
| VI. By incorporation.       | 8. Who may gain settlements.                        |
| VII. By union of towns.     | 9. Judgment of settlement final.                    |
| VIII. By division of towns. |   |
| IX. By change of lines.     |   |
| X. By residence.            |   |

1. A legal settlement may be gained by any person in any town, so as to oblige such town to support such person, if poor and unable to support himself, in the manner following, and not otherwise :

*First.* A married woman shall have the settlement of

her husband, if he has or shall acquire any within this state ; otherwise, her settlement at the time of her marriage shall continue.

To this class of cases the following rules and decisions are applicable :

“ Any persons cohabiting and acknowledging each other as husband and wife, and generally reputed to be such, for the period of three years, and until the decease of one of them, shall be deemed after such decease to have been legally married.” *R. S., ch. 149, sec. 11.* In all other cases there must be proof of a *marriage* which was *legal* according to the statutes in force when the marriage was contracted.

When a marriage takes place between a female pauper of one town and a male pauper of another town, the settlement of the female is changed to the latter town, if the paupers entered into the marriage contract without force, fraud, bribery, or any undue influence on the part of the former town. *2 N. H. R., 263.* And the marriage would be valid and the settlement changed, even though it was procured by the selectmen with the intention of changing the settlement ; but in such case the selectmen might be liable to an indictment therefor. *Ibid.*

A marriage solemnized by a person acting as a magistrate or a minister, though the parties may be liable to a penalty for not conforming to the statute regulations, is still valid. *2 N. H. R., 268.*

A marriage within the degrees of consanguinity, or where the wife has a husband or the husband a wife living, knowing such husband or wife to be alive, shall, if solemnized in this state, be incestuous and absolutely void, and the issue thereof illegitimate. *R. S., ch. 147, secs. 1, 2, 3 ; R. S., ch. 148, sec. 1.* And no settlement can be gained thereby. *4 Greenleaf R., 292.*

The marriage of a woman with a man who is *non compos* is not valid so as to change her settlement. He is not competent to make any contract. *12 Mass. R., 365.* But if a man marries a woman who is *non compos*, he being able to contract lawfully, her settlement will be changed.

It is immaterial whether the marriage was solemnized in



this state or not. If the husband has a settlement in this state, the wife gains one thereby. 9 *Mass. R.*, 202.

A settlement acquired by marriage is not lost by divorce, unless the cause of divorce is one which shews that the marriage never was valid. 9 *Mass. R.*, 203. But a divorce destroys every settlement which is only partially acquired. 13 *Maine R.*, 225.

The husband and wife are competent witnesses to testify concerning their own marriage. 3 *Pick. R.*, 293.

The wife gains no settlement by residing with her husband unless he gains a settlement—1 *Greenleaf R.*, 196; nor can she acquire a settlement distinct from that of her husband. *Ibid.*, 93.

If the husband does not reside in a town long enough to gain a settlement, and dies, his widow cannot acquire a settlement by residing there during the space within which, if the husband had lived, he would have gained a settlement. 15 *Maine R.*, 434.

The settlement of the wife follows that of the husband, until a divorce is decreed, though he has abandoned her and they live separate—13 *Maine R.*, 225; and though the husband is married to and living with another woman. *Ibid.*

*Second.* Legitimate children shall have the settlement of their father, if any he has within this state; otherwise the settlement of their mother, if any she has, until they gain a settlement of their own.

The following rules and decisions apply to this head:

Legitimate children follow the settlement of their father until they are emancipated. 3 *N. H. R.*, 316. As a general rule they shall be considered as emancipated at the age of twenty-one years. But when they are compelled to remain longer with a parent on account of infirmity of body or mind, so long as they so remain they are not to be considered as emancipated. 3 *ditto*, 331. It is not necessary that the person should be wholly deprived of reason, or actually confined to his bed by sickness. It is enough if the state of his health is such that it is fit and proper that he should remain under the care of his parent. *Ibid.* 3 *Greenleaf R.*, 388.

A minor is not emancipated by going to reside with a stranger, under a contract between the father of the minor and the stranger that he shall continue with him until he is

twenty-one years of age. 3 *N. H. R.*, 472. Nor by being "given away," and not residing with her parents. 5 *ditto*, 348.

The presumption of law is that all persons over twenty-one years of age are emancipated, and all under that age are not emancipated, until the contrary is proved. 6 *ditto*, 166.

A child not emancipated follows the settlement of the father, whether residing in his family or not. 5 *ditto*, 348. But if more than twenty-one years of age the rule is otherwise. *Ibid.* He is presumed to be emancipated, although residing with his parents. 4 *Mass. R.*, 496.

The marriage of the parents, and that the pauper is the issue of the marriage, must be proved; but when the latter is proved, slight evidence of the former will be sufficient. 8 *N. H. R.*, 534.

A daughter under twenty-one years of age is emancipated by marriage—13 *Mass. R.*, 469; but a son under that age is not so emancipated. 15 *ditto*, 203. The reason is that the settlement is derived from the husband, (not the wife) and he must be of age to acquire one.

If the father has a settlement in this state and dies, his legitimate minor children retain that settlement until they gain one for themselves, even if their mother marries again, or acquires a new settlement in any other way. But if the father has no settlement in this state, the settlement of the legitimate minor children will follow that of the mother as often as she gains a new one by marriage or otherwise. 1 *Pick. R.*, 198; 4 *Greenleaf R.*, 47; 7 *ditto*, 90. The rule as to illegitimate children is different. 3 *N. H. R.*, 316; 5 *Greenleaf R.*, 123.

A person becoming *non compos* after coming of age, does not follow the settlement of his father. 3 *Pick. R.*, 173. And he may gain a settlement by owning property to the amount required by law. 15 *Mass. R.*, 237.

It was held in Maine that if an alien married there, and then left the state and his family, without any intention of returning, but afterwards tried to induce his child to go and live with him out of the state, that the child was not emancipated so as to gain a settlement in his own right while a minor. 4 *Greenleaf R.*, 292.

The illegitimate *non compos* child of a *non compos* mother, in Maine, is considered as emancipated. 5 *Grif. R.*, 123.

A minor emancipated may gain a settlement. 3 *ditto*, 220.

*Third.* Illegitimate children shall have the settlement of their mother at the time of their birth, if any she has within the state.

The following rules and decisions apply to this head.

Illegitimate children do not follow the settlement of their mother, but retain the settlement which their mother had at the time of their birth, until they gain a new one for themselves. 3 *N. H. R.*, 316.

The illegitimate *non compos* child of a *non compos* mother, in Maine, is considered as emancipated for all the purposes of the act concerning the settlement and support of the poor. 5 *Grif. R.*, 123.

An illegitimate child when emancipated can gain a settlement, but not until emancipated from the control of the mother as a natural guardian. 1 *Fairfield R.*, 356. But living with the putative father, and his exclusive support and control of the child for sixteen years, does not emancipate, nor the marriage of the mother and her removal to another town, nor the mother becoming a pauper herself. *Ibid.*

There is no distinction between legitimate and illegitimate minor children as to their power to acquire a settlement in their own right. 2 *Fair. R.*, 458. See cases under the preceding head.

The marriage of the parents of an illegitimate child subsequent to its birth will not render the child legitimate; for all legal purposes, as its settlement, it is still a bastard. 1 *N. H. R.*, 261. But this does not apply to a child *born* during wedlock, though begotten before.

*Fourth.* Any person of the age of twenty-one years, having real estate of the value of one hundred and fifty dollars, or personal estate of the value of two hundred and fifty dollars, in the town where he dwells and has his home, and paying all taxes duly assessed on him and his estate for four years in succession, shall thereby gain a settlement in said town:

The following decisions and rules apply to this head.

The "*real estate*" must be "at least" an estate of freehold

(for life) either by lawful title or by disseizin. 1 *N. H. R.*, 62. The freehold of a husband in the estate of his wife is sufficient. 4 *Mass. R.*, 384. A right in equity to redeem real estate is "*real estate*" within this statute, but the equity must be worth \$150.00. 2 *N. H. R.*, 401. The *interest* of the pauper in the real estate, whatever it was, must have been of the value of \$150.00. 8 *ditto*, 124.

It is not necessary that the estate should be *taxed* "four years in succession," but only that all the taxes which are assessed upon it shall be paid. 3 *N. H. R.*, 349. If a tax is *abated* no settlement is gained. 5 *Mass. R.*, 430. Nor if the tax is not paid because the collector neglects to collect it and the person is able to pay. 20 *Pick. R.*, 345.

And it is necessary that the person should dwell and have his home in the town four years in succession, and have real or personal estate of the amount above specified during the whole of said four years. 3 *N. H. R.*, 381. And the four years must all be subsequent to January 1, 1796. *Sec. 3.* 1 *Pick. R.*, 154. But a temporary absence, without an intention to change his residence, will not prevent a settlement. 7 *Mass. R.*, 1.

It is for the town setting up the residence and payment of taxes, to prove that the taxes have been paid. 10 *Pick. R.*, 378.

For the meaning of "dwells and has his home," see *ch.* 9; also the cases cited under the sixth and eighth heads of this section.

*Fifth.* Any person admitted an inhabitant by any town at any legal meeting, in the warrant for which an article for the purpose shall be inserted, or who shall be chosen and shall actually serve one year in the office of clerk, treasurer, selectman or overseer of the poor therein, shall thereby gain a settlement in such town.

The following rules and decisions may be applicable.

A person who was chosen to an office by the town, and accepted it, but before the expiration of the year for which he was chosen, removed to another town, was held not to have gained a settlement thereby in the town where he was so chosen. 2 *N. H. R.*, 295. So if he was committed to prison within the year. 12 *Mass. R.*, 262.

Such officer must be proved to have been legally chosen at a legal meeting of the town, and legally qualified. See



*ch. 4.* But the record of the choice of a person to an office, and proof of his service in said office for one year, is evidence from which a jury may infer that the meeting at which the officer was chosen was legally holden, after thirty-nine years. 9 *N. H. R.*, 369.

The year intended is the municipal year, or the year immediately following the election—12 *Mass. R.*, 262; or during the year succeeding the day on which his term of office commences, if this is subsequent to the election. *Ibid.*

It is not necessary that the officer should be called on to perform any duty, but he must be in a situation to serve, or capable of serving during the whole year. 12 *Mass. R.*, 262.

An occasional absence, however, or a disability to perform any particular act in his office, caused by sickness or otherwise, will not prevent a settlement—*Ibid.*; but long continued sickness might perhaps prevent. *Ibid.*

*Sixth.* Any person dwelling and having his home in any unincorporated place at the time when the same shall become incorporated into a town, shall thereby gain a settlement therein.

The following rules and decisions apply to this head.

Places not incorporated are not liable for the support of paupers, and no person can gain a settlement in such place. But the act of incorporation gives to every person having a "home" in such place at that time a settlement therein. 4 *N. H. R.*, 86.

And his "home" may be in such place, and he gain a settlement thereby, though absent from the place, if his absence is only for a temporary purpose. 3 *Greenleaf R.*, 390. See *ch. 9*, as to what constitutes a "home."

It is held in Maine that an alien gains no settlement by dwelling in a town at the time of its incorporation. 1 *Greenleaf R.*, 196.

Whoever removes into a place with the intention of remaining there an indefinite time, thereby establishes his *home* in such place. 13 *Maine R.*, 225.

*Seventh.* If two or more towns shall be incorporated into one town, any person having his settlement in either of such towns shall have his settlement in the town so incorporated.

This refers solely to the union of incorporated places or



“towns.” If one of the places is *unincorporated*, the consequence, however, is the same under the *sixth* mode of gaining a settlement by incorporation.

It is immaterial whether the pauper *resides* in either town at the time of the union or not; if he has a *settlement* in either it is sufficient.

*Eighth.* Upon the division of any town, any person having his settlement therein shall thereafter have his settlement in that town in which his last dwelling place shall have been.

The following rules and decisions apply to this head.

A female emancipated may have a “home” in a town so as to gain a settlement in this mode, by residing seven years. 1 *N. H. R.*, 194. Her home is where she labors. *Ibid.*

By “*dwelling place*” may probably be understood “*home*.”

This head refers not only to the case where one town is divided into two towns, but also the case where a part of a town is set off to another town.

A pauper, supported by a town which is divided, and residing in that part of it which is incorporated into a new town, gains no settlement in the new town; he has no “*home*” in such new town within the meaning of the statute, because he is a *pauper* and under the control of others. 3 *N. H. R.*, 7.

The pauper must have his *settlement* in the town at the time of the division; but it is not material whether he then *resides* in the town or not. 19 *Pick. R.*, 426; 3 *Greenleaf R.*, 390.

*Ninth.* If the dwelling-house or home of any person residing but having no settlement in any town shall, by act of law, fall within the limits of any other town, such person shall acquire a settlement in such last named town, in the same time and manner as he would have done in the former town if no such change had taken place.

The following rules and decisions apply to this head.

The two preceding paragraphs refer to cases where the pauper has gained a settlement; this paragraph refers to those cases where the settlement is not complete, but where the person is in the way of gaining one; and provides that the change of limits or name of the town in which he lives shall not prevent his gaining a settlement in the new town into which the law transfers him.

The legislature, however, may control or change this rule, by different provisions in the act altering the limits of the town, and may leave the settlement of paupers as they think proper.

*Tenth.* Any person of the age of twenty-one years, who shall have resided in any town in this state, and, being taxed for his poll seven years in succession, shall have paid all taxes legally assessed on his poll and estate during said term, shall thereby gain a settlement in such town. *R. S., ch. 65, sec. 1.*

The following rules and decisions apply to this head.

To gain a settlement in this mode the person *must be "taxed for his poll seven years in succession,"* and pay all the taxes on his poll and estate. If the selectmen omit to tax him a single year for his poll, he gains no settlement. *3 N. H. R., 203 ; 7 Greenleaf R., 363.* The object is to give the town an opportunity to prevent a settlement being gained, and the selectmen may omit to tax a man for his poll for this purpose. *4 N. H. R., 48.* Having an estate of less amount than the law requires, and paying taxes on it seven years, is not sufficient. *Ibid.*

By the words, "*resided in any town,*" is probably understood, *dwelt and had his home.* The seven years' residence must be *uninterrupted* ; any absence, however short, with the intention of changing the residence, will prevent the gaining a settlement. *11 Mass. R., 394.* And so if during that time the person is supported as a pauper, and the expenses thereof are paid by the town in which his settlement then was. *13 Mass. R., 460.* So if committed to jail, and relieved as a pauper by the jailer. *12 Pick. R., 1.*

But if a tax is abated, he will not gain a settlement. *5 Mass. R., 430.* Nor if it is not collected by reason of the neglect of the collector. *20 Pick. R., 345 ;* nor if the tax is discharged by vote of the town. *19 Pick. R., 389.*

A settlement will be gained by such residence and taxation, although the wife of the person has been during the seven years supported as a pauper in another town, if it was done without his knowledge or request, or any demand and refusal of payment of such expenses by him. *19 Pick. R., 480 ;* or though his wife and children have resided during the seven years in another state, and he has occasionally visited them there. *13 Mass. R., 501.*

2. No person shall gain a settlement by birth in any town in which neither of his parents then has a settlement. *R. S., ch. 65, sec. 2.*

3. No town shall be liable for the support of any person unless he, or the person under whom he derives his settlement, shall have gained a settlement therein under some law passed since the thirty-first day of December, A. D., 1795. *Ibid., sec. 3.*

The laws passed since Dec. 31, 1795, are the acts of January 1, 1796, December 25, 1816, December 16, 1828, and the Revised Statutes. The warning out laws are repealed, and all settlements gained under them; the only question is, whether the pauper or the person under whom he derives his settlement has gained a settlement under one of these four statutes.

4. Every settlement shall continue until a new settlement is gained in this state, and upon gaining such new settlement any former settlement shall be lost. *Ibid., sec. 4.*

When a person has once gained a settlement in this state it is not lost by gaining another settlement in another state. *2 N. H. R., 131.* And the right of settlement may be transmitted to his children born in such other state, so as to avail them on their return within this state, where a settlement had been previously here gained by the father. *8 N. H. R., 532.* But is such right transmitted to the wife, married to him while residing in such other state, and not returning to this state during his life?

No person can have two settlements in this state at the same time. *1 Pick. R., 153.*

5. A general law, whose operations may change the existing settlements of paupers, is not unconstitutional. *2 N. H. R., 102.*

6. The act of January 1, 1796, is as follows. It is the same, substantially, as sections 1, 2 and 4 of this chapter, except the fifth mode of gaining a settlement.

“Legal settlements in any town or district within this state shall be hereafter gained, so as to oblige such town or district to support the persons gaining the same, if they become poor and unable to support themselves, by the ways and means following, and not otherwise:

I. A married woman shall have the settlement of her husband, if any he have within this state; but if other-

wise, her own, if any she had at the time of marriage, shall not be lost or suspended by such marriage, unless she shall have gained a legal settlement elsewhere; but in case no such settlement shall be by her obtained after such marriage; and in case she shall become poor and be supported at the cost and charge of the town or district of her settlement at the time of such marriage, the husband being poor and needing relief, he shall be provided for and supported in the same town or district, but at the charge of the state.

II. Legitimate children shall have the settlement of their father, if he shall have any such within this state, until they gain a settlement of their own; but if he shall have none, they shall have the settlement of their mother, if she shall have any.

III. Illegitimate children shall have the settlement of their mother at the time of their birth, if she shall have any within this state; but neither legitimate nor illegitimate children shall gain a settlement by birth in any place where they may be born, if neither of their parents shall then have a settlement there.

IV. Any person, of twenty-one years of age and upwards, having real estate of the value of one hundred and fifty dollars, or personal estate of the value of two hundred and fifty dollars, in the town or district where he dwells and has his home, and shall for the term of four years pay all taxes duly assessed on his poll and the estate aforesaid, shall thereby gain a settlement in such town or district.

V. Any person who shall be admitted an inhabitant by any town or district at a legal meeting, in the warrant for which an article shall be inserted for that purpose, or shall be chosen and actually serve one year in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable, or other town officer liable to be fined for not accepting his office, being duly elected thereto in any town or district within this state, shall thereby gain a settlement in said town or district.

VI. All persons dwelling and having their homes in any unincorporated place in this state, at the time when the same shall be incorporated into a town or district, shall thereby gain a settlement therein.

VII. Upon division of towns or districts, every person



having a settlement in either of them, but being removed therefrom at the time of such division, and not having gained a settlement elsewhere, shall have his settlement in that town or district wherein his former dwelling place or home shall be upon such division. And when any new town or district shall be incorporated, composed of one or more old incorporated towns or districts, all persons settled in the town or towns, district or districts, of which such new town or district is composed, and who shall actually dwell and have their homes within the limits of such new town or district at the time of its incorporation, shall thereby gain a settlement in such new town or district.

*Provided, nevertheless,* That no person residing in that part of any town or district, which upon such division shall be incorporated into a new town or district, having then no settlement therein, shall gain any by force of such incorporation; nor shall such incorporation prevent his gaining a settlement therein, within the time and by the means by which he would have gained a settlement there, if no such division had been made.

VIII. Any person, of the age of twenty-one years, who shall hereafter reside in any town or district within this state, and being taxed for his poll for the term of seven years, shall pay all taxes legally assessed on his poll and estate during the said term, shall be an inhabitant in said town or district.

And every legal settlement heretofore gained, or which shall be gained by force of this act, shall continue until lost or defeated by gaining a new one; and upon gaining a new settlement, all former settlements shall be lost."

The officers mentioned in paragraph 5, "*liable to be fined for not accepting office,*" besides those specified, were "firewards, surveyors of highways, tythingmen, fence-viewers, clerk of the market, sealers of leather, sealers of weights and measures, hogreeves, corders of wood, surveyors of lumber, cullers of staves, field-drivers, and every other town officer that the law directs, or that may be necessary for managing the affairs of the town."

Paragraph 5 of that act continued in force until December 25, 1816, when it was repealed, and since that time a settlement by being chosen into office could be gained only by holding the offices of selectman, overseer of the poor,



town-clerk or treasurer, as is now provided. The rest of the act of January 1, 1796, remained in force and unaltered.

"District" in that act means an *incorporated place*. 4 *N. H. R.*, 89.

7. The act of December 16, 1828, is almost literally the same as that of January 1, 1796.

8. By the words, "any person," in this chapter, are meant such persons as are legally capable of gaining a settlement only. 1 *Greenleaf R.*, 93. Persons *non compos* are not capable of gaining a settlement by any mode requiring an act of volition on their part, but may gain a settlement in any mode which requires no such act. 3 *Greenleaf R.*, 220. Aliens cannot acquire a settlement in Massachusetts. 16 *Mass. R.*, 230. But incipient insanity does not incapacitate a person for gaining a settlement. 3 *Pick. R.*, 173.

9. When the settlement of a pauper is once determined by a judgment of the court, in a suit between two towns, it will be conclusive as between those towns. 4 *Mass. R.*, 180, 273.

## CHAPTER 44.

### OF THE SUPPORT AND DISPOSAL OF PAUPERS.

- |                                  |                                     |
|----------------------------------|-------------------------------------|
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1. Any town may purchase or hold lands, and may

purchase or erect all buildings and furnish all means which may be necessary for the accommodation, support and employment of the poor within said town, and at any legal meeting may raise so much money as may be necessary for said purposes, and for managing and keeping such property in repair. *R. S., ch. 66, sec. 2.*

Unincorporated places have no authority to raise money for the support of paupers. *4 N. H. R., 93.*

2. The town may appoint all necessary officers for the management of such property, and establish necessary by-laws and regulations for the government of its inmates, provided that no punishment shall exceed that allowed in the house of correction of said town. *Ibid., sec. 3.*

3. When any person in any town shall be poor and unable to support himself, he shall be relieved and maintained by the overseers of the poor of such town, whether he has a settlement in such town or otherwise. *Ibid., sec. 1.* If no overseers of the poor are chosen by the town, the selectmen are required to act in that capacity. See *ch. 4, sec. 4.* For the provisions relative to the insane, see *ch. 48.*

4. The overseers of the poor in any town may, by written contract, bind out to labor for a term not exceeding one year, or employ in their work-house, every person residing in such town who lives idly and pursues no lawful business, and who is poor and stands in need of relief, or whose family standing in need of relief is supported by such town, and shall take the wages and appropriate the same to the maintenance of such person, his family or children. *Ibid., sec. 4.*

5. Said overseers may set to work in the work-house or elsewhere, or bind out as apprentices, all children residing in their respective towns who are not employed in some lawful business, and whose parents are unable or neglect to maintain them. The males may be bound out until they arrive at the age of twenty-one years, and the females until they arrive at the age of eighteen years. *Ibid., sec. 5.*

6. Such contract shall be in writing, shall be made equitably, and as much as may be for the interests of the persons bound out, and shall provide that they shall be instructed to read, write and cipher, and to do such work and business as is suitable to their condition. The overseers shall inquire into the usage of all persons so bound out, shall see that said contract is fulfilled, and that all wrongs or injuries are redressed, and the rights and obligations of such

master and apprentice shall be the same as in the case of other apprentices. *Ibid.*, sec. 6.

For the powers and duties of masters and apprentices, and of the overseers of the poor in such cases, and forms of proceedings, see *ch.* 48.

7. If any pauper shall die in any town in this state, having a settlement in such town or otherwise, the overseers of the poor shall cause such person to be decently buried at the expense of the town. *Ibid.*, sec. 7.

8. The relations of any poor person in the line of father or grandfather, mother or grandmother, children or grandchildren of sufficient ability, shall be liable to maintain such person when standing in need of relief. If such person has no such relations of sufficient ability, the town wherein such person has a legal settlement shall be liable for his support. *Ibid.*, sec. 8.

9. If any town in this state shall expend any sum for the support or burial as aforesaid of any poor person having a settlement in some other town in this state, or having any relation of sufficient ability, such sum may be recovered of the town or person so chargeable by law with the support of such poor person. *Ibid.*, sec. 9.

If a town claims that a certain tract of territory belongs to it, such town is liable to support the inhabitants of such tract who may become paupers, whether the tract really belongs to such town or not. 2 *N. H. R.*, 242.

10. No action shall be sustained against any town or person chargeable as aforesaid, unless a notice in writing, signed by the overseers of the poor, stating the sums so expended, shall first have been given to such town or person. *Ibid.*, sec. 10.

No action can be maintained by or against an unincorporated place for the support of paupers. 4 *N. H. R.*, 93.

11. Such notice shall be served upon such town by the sheriff or his deputy, by leaving an attested copy thereof and of his return thereon, with one at least of the selectmen or overseers of the poor, and with the clerk of such town; and upon any person chargeable as aforesaid, by giving him in hand, or leaving at his usual place of abode, a like copy. *Ibid.*, sec. 11.

12. The officer making such service shall, within twenty days thereafter, make a return of the original notice, with his doings therein, to the clerk of the court of common pleas in the county in which the town or person chargeable may

be, and shall receive the same fees for his travel and service as by law are allowed for serving writs. *Ibid.*, sec. 12.

13. Such notice shall be sufficient for all sums so expended within ninety days previous to such service, and for any sums so expended within one year thereafter. *Ibid.*, sec. 13.

14. No action aforesaid shall be sustained unless commenced within three years from the time of the service of such notice upon the town or person chargeable, nor for any sum that may have been expended more than ninety days previous to such notice. *Ibid.*, sec. 14.

15. When any county, in which any action for the support of a pauper is pending, may eventually be liable for the support of such pauper under any law of this state, the court shall, on motion, transfer such action to an adjoining county for adjudication. *Ibid.*, sec. 15.

16. A town in which a jail is situate is bound to provide for the support of a pauper confined in such jail on civil process, whether such prisoner has a legal settlement in such town or not. 9 *N. H. R.*, 107; 5 *Mass. R.*, 244, 328.

If the person applying for relief is "poor and unable to support himself," and "stands in need of relief," the selectmen are bound to relieve him; if they refuse to do so on application, they may be liable to an indictment. The chief question is as to the *necessity* of the person making application; not as to the liability of other persons for his support.

Application for relief should be made by the pauper, either personally or by some person authorized by him to apply, but need not be in writing.

When the question as to the settlement of a pauper arises, the selectmen should first ascertain all the facts in the case, and what the law was at the time when the settlement is alleged to have been gained. By the law and the facts, as they then existed, the question of liability is to be determined. After gaining all the information in their power, and taking such legal advice as they think expedient, the selectmen must act according to their best judgment and as if the case was their own. The support of a family of paupers is no small matter, however, and great care and deliberation should be used; but lawsuits should be avoided if practicable.

The manner of affording relief is of consequence. It



should be so afforded as to relieve want, but not to encourage idleness and profligacy. Where the number of paupers is sufficient, a poor farm is the most economical and useful mode. In such case it is better generally to furnish assistance at the poor farm. But when the amount of assistance required is small, or in special cases, as of sickness, where a removal would be inexpedient or dangerous, relief should be furnished at the home of the applicant. Distress must not go unrelieved, whatever may have been its cause; but the object of the law is to encourage the honest and deserving pauper, and to discourage idleness and vice. This rule should guide selectmen in the discharge of their duties.

17. "There is no moral obligation which binds a town to support its poor inhabitants. Our whole system of poor laws is founded upon the provisions of our statutes. No action can be maintained against any town for the support of a pauper unless it be given by statute. But we have no statute which gives an action to an individual against a town for the support of a pauper. Persons standing in need of relief are to be supported by the overseers of the poor in the town where they happen to be; and in case they are not settled there, an action is given to such town against the town in which they have a settlement." If the overseers employ an individual to take care of the pauper, the town is liable. 1 *N. H. R.*, 52. In order to charge a town the statute must be strictly pursued. 3 *ditto*, 81.

A pauper for whose support provision was made in the town of W., in which she had a settlement, went into the adjoining town of N. S., and there expenses were incurred for her support, although the pauper herself, the person with whom she resided in N. S., and the town all knew that a place was provided for her in W. to which she was able to walk without difficulty; held that N. S. could not recover of W. for those expenses. 2 *Pick. R.*, 341.

Persons confined in jail on civil process may be paupers, and the town in which their settlement is, liable for their support. 9 *N. H. R.*, 107. So if confined in a house of correction, as idle and disorderly persons. 12 *Mass. R.*, 355.

No action lies in favor of an individual against a town for the support of a pauper, unless upon an agreement made by the town or the selectmen therefor. 6 *Mass. R.*, 501.

Towns are liable for *reasonable expenses* only; not always for the sums paid, if extravagant. 15 *Mass. R.*, 248.



A town may be liable though notice has been given to another town, and the sums stated in the notice recovered of such town. 17 *Mass. R.*, 432.

A charge for the services of the overseers of the poor cannot be recovered. 8 *N. H. R.*, 144.

It is not necessary to prove every item set out in the notice; but if a notice sets forth sums which were never paid or agreed to be paid, or sums larger than the true sums, the selectmen knowing the facts to be so, nothing can be recovered on such items. 8 *ditto*, 142.

If a town, supposing itself liable for the support of a pauper, pays certain expenses incurred therefor, and afterwards discovers that another town is liable, the amount so paid cannot be recovered back of such other town. 12 *Pick. R.*, 1.

18. When a town relieves a pauper belonging to another town, in order to make the town to which the pauper belongs liable, notice of the sums expended must be given within ninety days from the time when the relief mentioned in the notice was afforded. 2 *N. H. R.*, 470. The ninety days run from the time the relief is furnished, and not from the time it is paid for. *Ibid.* If any part of the amount claimed in such notice was furnished more than ninety days before the service of the notice, it may destroy the whole claim. *Ibid.* It is of no consequence whether the supplies furnished have been paid for by the town before the notice is given, or not. 3 *ditto*, 291; 9 *ditto*, 369.

The attorney for a defendant town may lawfully make an agreement to waive any defect of notice or service; and if made in writing in court in term time (or dated as if made in term time, thus: *Court of Common Pleas:—Rockingham ss., February Term, 1843, Town of A. vs. Town of B.*) it will be enforced by the court. 2 *ditto*, 520. So also if made in the same manner by selectmen. 3 *ditto*, 38. But if made by the selectmen and not dated as of the term as aforesaid, the action being then in court, the agreement will not be binding on the town, and the court cannot enforce it. 2 *ditto*, 131; 3 *ditto*, 39.

A notice that \$35.87 had been expended for the support of "Sally and Esther Benson; also the daughter of Sally Benson, paupers," is not sufficient, and the town cannot recover. The pauper must be clearly pointed out in the notice. "*The daughter of Sally Benson,*" is not enough, for she may have several daughters. "*The oldest daughter,*"

might be sufficient. It is necessary, too, that the sums expended for each should be stated, and this renders the notice bad. 2 *ditto*, 530.

But if the relief is furnished to a person having a wife and minor children, living in one family, the notice need not specify the sum expended for each member of the family, though each member must be named expressly in the notice. 8 *ditto*, 142.

Notice directed "To the selectmen and town-clerk of the town of C.," is not sufficient; it must be directed "*To the town of C.*" If not so directed the notice is bad. 3 *ditto*, 81.

Leaving an attested copy of the notice at the usual place of abode of one selectman and the town-clerk, is a sufficient service. 5 *ditto*, 348. The notice must be returned to the court of common pleas within twenty days, or it will not be of any avail. 3 *ditto*, 277.

A notice signed by a majority of the selectmen is sufficient. 6 *ditto*, 306.

And notice must be given seasonably of all sums expended for the support of the pauper, as no action without this will lie to recover them. Notice of other expenses previously incurred in the support of such pauper is not sufficient—7 *ditto*, 251; but is now good for one year, *after* notice. *Sec. 13, of this chapter.*

A husband and father may be liable for the support of his wife and children by a town in some cases *without* notice. 7 *ditto*, 571.

And notice must be given in good faith; if it contains charges for sums not expended, or overcharges, nothing can be recovered for the items in which they are included. It is fraudulent. 8 *ditto*, 145.

Notice that "S. and his family," or that "S. and several of his children" are chargeable, is good as to S., (in Maine) but not good as to his family or children. 1 *Grlf. R.*, 329. So also notice that S. and his family are chargeable, the only subject of expense being one of his sons who was alluded to in the notice, but not named by his name, was held to be insufficient. 5 *Grlf. R.*, 430.

A pauper, whose name was Patty Baxter, was known by the name of Patty LaBarron. A notice in which she was called Patty Labern was held to be insufficient. 5 *Pick. R.*, 190.

A notice that "E. S. and her three children" were

chargeable, is insufficient as to the children, but sufficient as to her, if the expenses are stated separately. 4 *Pick. R.*, 358. The names of the children should be stated, so that they may be known.

19. The selectmen were held not to be liable upon the following agreement, as they were acting in behalf of the town, but the town would be liable thereon :

“The subscribers, in behalf of the town, hereby acknowledge notice to have been given us by the selectmen of the town of Hanover, in relation to the support of the family of John Kimball, for which said selectmen of Hanover claim payment of us, and we engage to take no advantage and will not hold them to furnish evidence of said notice having been given in the form prescribed by law. This acknowledgment extends to all claims for said support from the 8th of March last past.

SAMUEL EATON, } *Selectmen*  
 ABRAM MORRILL, } *of Weare.*

*August 30, 1816.”*

The town of Weare did hold the plaintiff “to furnish evidence” of a legal notice, and obtained a verdict in consequence ; but it was held, in a suit on the above agreement, that the town was liable for damages for its violation though the selectmen were not. 3 *N. H. R.*, 38.

20. One selectman may furnish proper supplies to a pauper actually standing in need of relief, and residing in the town, without the actual assent of the others ; their assent may be presumed, because it is their duty to assent. 3 *ditto*, 291. A majority is sufficient in any case. 6 *ditto*, 306.

Selectmen may bind their town by a note for the support of a pauper legally chargeable upon such town, although notice has not been served, if the time of such service has not expired—7 *ditto*, 298 ; or may waive notice or any informality. 3 *ditto*, 38. But a note or agreement signed by one selectman only, “for the selectmen,” is not the contract of the town—7 *ditto*, 299 ; nor will it be permitted to be shown that the other selectmen authorized it to be so signed. *Ibid.*

The selectmen may make a contract for the support of any pauper, and agree upon a price and time of payment, and the town will be bound. 7 *N. H. R.*, 301.

And the selectmen may agree with the person then supporting a pauper, for future support, and give notice to the town

or person chargeable, and recover the expenses of such support. 17 *Pick. R.*, 68. But the selectmen cannot carry a pauper out of the state (or out of the town to which he is chargeable, except to the Insane Asylum) to be there supported against his will. 17 *Pick. R.*, 68.

If the pauper resides in the town in which he has a settlement, and stands in need of relief, one selectman may supply or order a supply for his need, and the assent of the other selectmen will be presumed. But if the pauper resides in a different town, one selectman cannot bind the town for supplies furnished; a majority must act. If the promise or agreement made by such selectman contains proper words to bind himself, instead of the town, he may be personally liable. 9 *N. H. R.*, 55.

21. A parent is not bound by law to support the illegitimate offspring of his children. 4 *ditto*, 86. But a parent is bound to support his wife, and his children who are not emancipated, as long as he has any means whatever to do it. They cannot become a charge upon the town as paupers until he is a pauper. 4 *ditto*, 96. The claim of unemancipated children to a support from their parents stands on very different ground, from the claim of any other description of persons to support from their kindred. 4 *ditto*, 95; 161.

The obligation to support a wife and children exists at common law, and does not depend on the statute. The husband and father is liable without notice for necessities, but not for the wife if she has deserted him. 7 *ditto*, 571. The common law obligation is not taken away by the statute, but a new obligation is imposed. 7 *ditto*, 577.

22. What is "*sufficient ability*" to support poor relations, within the meaning of section 8, is a question of much practical difficulty. The rule in relation to the liability of parents is laid down in *sec.* 21. The rule in other cases is different, and the following points have been decided:

The son of a pauper owned a farm worth \$2,000, and was in debt \$1,400, and of very infirm health. The court instructed the jury, that if they were satisfied that the son could not from the produce of his farm, with his own labor and the assistance of his family, maintain himself, his wife, children and parents, and pay the interest of his debts annually, he was not of "*sufficient ability*." The jury decided



that he was not of “*sufficient ability*” to support his mother. 4 *N. H. R.*, 96.

The son of a pauper owned real estate worth \$1.800, and personal estate worth \$500; and his debts amounted to \$700. He had four children, and his health was feeble. The court gave to the jury the same directions as in the preceding case, and they decided that he was not “of sufficient ability” to support his father. 4 *ditto*, 96, 158. He should not himself become poorer every year, in his effort to support his parents, or he may also become a pauper, and this is not the intent of the law. 4 *ditto*, 163.

“A relation who, without breaking up his own family, without a change of his professional pursuits or of his accustomed style of living, and without any hazard to the probable maintenance for life of himself and dependents, can contribute to a pauper’s relief, is certainly a relative of sufficient ability. It matters not whether the ability be derived from a surplus of annual income, or of fixed capital either personal or real. On the other hand, a relative who cannot thus contribute without incurring some of those sacrifices and dangers, is certainly destitute of sufficient ability.” *Walpole v. Marlow: Cheshire, May Term, 1821.*

23. It is not necessary, in order to entitle a person to relief as a pauper, that he should be altogether destitute of property. 8 *N. H. R.*, 305. But he is to be deemed a pauper who cannot relieve his immediate wants without disposing of property which is essential, and which, if parted with, must be immediately replaced to enable him to live. *Ibid.*

A prisoner confined in jail for debt may be a pauper, and if poor and standing in need of relief the selectmen of the town in which the jail is situate must relieve him, and may recover of the town in which he has his settlement. 9 *ditto*, 107.

If a person who has bodily health and strength, but small mental capacity, and who has been supported many years as a pauper, at last finds an employer who will take care of him for his labor, and wishes to stay with such employer, he is not to be considered as a pauper any longer. 14 *Pick. R.*, 341.

24. The town cannot recover of a pauper the sums expended for his relief, if such pauper should afterwards



acquire property. 9 *N. H. R.*, 195. It is a charity and a gift to relieve present distress. *Ibid.*

25. The form of an indenture, under *sec.* 4, may be :

This indenture, made by and between A. B., C. D. and E. F., overseers of the poor in the town of H., in the county of C., and state of New-Hampshire, of the one part, and T. L. M., of said H., of the other part, WITNESSETH :

That the said overseers, by the authority in them vested by law, have bound and do hereby bind out to labor to the said T. L. M., for the space of one year from the date hereof, A. J., a person residing in said town of H., who lives idly and pursues no lawful business, and who is poor and stands in need of relief, during which time the said A. J. shall faithfully serve the said T. L. M. in all things whereto he may lawfully command him.

And the said T. L. M. covenants on his part that he will pay to the said overseers, for the services of the said A. J., for said term, the sum of \_\_\_\_\_ dollars, to be by them appropriated to the maintenance of the said A. J.

In witness whereof the said parties have hereunto set their hands and seals, this first day of April, in the year eighteen hundred and forty-three.

Signed, sealed and delivered in presence of	A. B.	} <i>Overseers</i> (seal.) <i>of the Poor</i> (seal.) <i>in H——.</i> (seal.)	
	C. D.		
	E. F.		
	T. L. M.		(seal.)

The above form relates to a person having no family. If the person bound out has a family, the words, "who lives idly and pursues no lawful business, and who is poor and stands in need of relief," should be omitted, and the words—"whose family, standing in need of relief, is supported by such town," inserted instead. Also, after the words, "maintenance of the said A. J.," add—and his family.

It is not necessary that the person so bound should have a settlement in the town, but merely that he should *reside* in the town, and he or his family be relieved as paupers. The overseers must state the reason of the binding out, in the indenture ; and they have no authority to bind out unless the person *lives idly, pursues no lawful business, is poor and stands in need of relief*, or unless *his family, standing in need of relief, is supported by the town.*

Two copies of the indenture should be made and signed, one for the use of the town and the other for the use of the other party.

26. The form of an indenture, under *sec. 5*, may be :

This indenture, made by and between A. B., C. D. and E. F., overseers of the poor of the town of H., in the county of C., and state of New-Hampshire, of the one part, and T. L. M., of said H., of the other part, WITNESSETH :

That the said overseers, by the authority in them vested by law, have bound and do hereby bind out L. G., (a minor child of M. G.,) a person residing in said town of H., who is not employed in any lawful business, and whose parents are unable or neglect to maintain him, as an apprentice unto the said T. L. M., to learn the business, art or trade of a ———, and to serve the said T. L. M. faithfully from the date hereof until the sixth day of August, in the year eighteen hundred and fifty-four, when the said minor will be of the age of twenty-one years.

And the said T. L. M. on his part covenants that he will teach said apprentice, or cause him to be faithfully taught, in said business, trade or art, and will provide for him suitable board, lodging, clothing, nursing, attendance and other necessities for his comfortable support in sickness and in health ; and that he will cause said minor to be instructed to read, write and cipher.

(Here insert any other provisions as agreed upon.)

In witness whereof the said parties have hereunto set their hands and seals, this first day of April, in the year eighteen hundred forty-three.

Signed, sealed and delivered in presence of	A. B.	} Overseers (seal.) of the Poor (seal.) in H——. (seal.)	
	C. D.		
	E. F.		
	T. L. M.		(seal.)

Before the Revised Statutes it was necessary, in many cases, that the minors bound out should be chargeable to the town ; it is now only necessary that they should reside in the town, and not be employed in some lawful business, and that their parents should be unable or neglect to maintain them.

27. The form of the notice in *sec. 10* may be :

*To the town of Lancaster, in the County of Coos and State of New-Hampshire.*

You are hereby notified that on the tenth day of September, 1843, John Smith, Jane Smith, wife of said John, and James Smith, Peter Smith and Sally Smith, minor children of said John Smith, then and ever since persons poor and unable to support themselves, and having their settlement in said town of Lancaster, were relieved and have ever since been supported by the town of Peterborough, in the county of Hillsborough, in said state; and the sums expended by said Peterborough for the relief and maintenance of the said John Smith, his wife and children above named, since said tenth day of September, up to December 3, 1843, are as follows:

For board of family 12 weeks, at \$4.50	
per week, - - - - -	\$54.00
Paid Dr. W. C., for attending Jane Smith, -	8.00
Paid Nancy Morse, for nursing Mrs. Smith	
two weeks, - - - - -	2.00
Paid board of Nancy Morse, while nursing, -	3.00
For 10 yards of calico for Mrs. Smith and	
Sally Smith, - - - - -	1.25
For four pairs of feeting for the family, -	1.00
For one coat for John Smith, - - - - -	5.00
	<hr/>
	\$74.25.

A. B. } *Overseers of the Poor*  
 C. D. } *in*  
 E. F. } *Peterborough.*

*Peterborough, December 3, 1843.*

The notice should be signed by the overseers of the poor, if there are any chosen by the town; if not, it should be signed by the selectmen as *overseers of the poor*, and not as *selectmen*. The notice is given by them acting in the office of overseers of the poor, and not acting as selectmen.

28. The overseers are not personally liable on the indentures of an apprentice under this chapter, or under chapter 48. If the apprentice disobeys, or steals, or becomes sick, the master must pursue the remedy given by the statute by a complaint; but neither party can put an end to the indentures without the consent of the other, except in such

manner. 2 *Pick. R.*, 457. Before the Revised Statutes the overseers were not authorized to bind out any person, unless "chargeable to such town;" 4 *N. H. R.*, 139; but these words are now omitted, and the word "residing" used instead.

"The power of taking children from their parents and families and homes, and binding them to strangers as servants, which is here (sections 4 and 5,) conferred upon overseers, is a high and arbitrary, if not a dangerous power; and one which should only be exercised in cases of clear necessity, and where all the circumstances concur which justify and require so extraordinary an interposition in the domestic relations of private families. Nothing is to be presumed in aid of it; but every thing which is required for its support must be shewn affirmatively." 19 *Pick. R.*, 360. In such an enquiry it would be highly proper to notify the parent, and give him an opportunity to be heard on a question of so much interest to him; but the statute does not expressly require it. *Ibid.*

## CHAPTER 45.

### OF PAUPERS NOT CHARGEABLE TO ANY TOWN OR PERSON IN THE STATE.

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| 1. County paupers, who are such.        | 7. Master of vessel liable, when.        |
| 2. County poor farm bought, how.        | 8. Suit on such bond regulated.          |
| 3. County paupers bound out, how.       | 9. Bringing pauper into county, penalty. |
| 4. County liable to support, when.      | 10. Pauper may be returned, how.         |
| 5. Bringing pauper into state, penalty. | 11. Form of indenture in sec. 3.         |
| 6. Master of vessel to give bond.       | 12. Form of bond in sec. 6.              |
|   | 13. Form of pauper account.              |
|   | 14. Insane county paupers.               |

1. When any poor person, for whose support no person or town in this state is chargeable, shall be relieved or

buried at the expense of any town, the overseers of the poor, within one year thereafter, or in case a suit therefor has, before the termination of said year, been commenced against any town or person, within six months after the termination thereof, may present an account of all moneys so expended, to the court of common pleas of the county in which such town is, with proper vouchers, and said court shall allow such sum as they shall think reasonable, to be paid out of the county treasury. *R. S., ch. 67, sec. 1.*

2. The court of common pleas in any county, upon the recommendation of a majority of the representatives to the legislature from the several towns composing said county, may provide, at the expense of such county, all such lands, buildings and articles as may be necessary for the accommodation, support and employment of the poor who may be chargeable to such county, and may appoint suitable officers for their management, and establish necessary rules and regulations therefor; but in no case shall the punishment for any offence exceed that allowed by law in the house of correction. *Ibid., sec. 2.*

3. The court of common pleas may bind out, or may authorize the overseers of the poor of any town to bind out or employ any person chargeable or liable to be chargeable to the county, in the same manner that such overseers might do in case of a person chargeable to such town; and the rights and obligations of all parties shall be the same as in such case. *Ibid., sec. 3.*

4. When any town in this state shall cease to be organized as a town, all paupers who may have a legal settlement in such town, and who have no relations by law bound to support them, shall be maintained by the county in which such town is situate, until the same shall be reorganized. *Ibid., sec. 4.*

5. If any person shall bring from any other state and leave in any town in this state, or shall so bring with intent to leave, any poor and indigent person, having no visible means of support, and no settlement within the state, knowing such person to be poor and indigent as aforesaid, he shall be punished by fine not exceeding three hundred dollars nor less than fifty dollars, or by imprisonment not exceeding six months. *Ibid., sec. 5.*

6. No master of any vessel, having passengers on board who have no settlement within this state, shall suffer such



passengers to land, until he shall give bond to the state in a sum equal to two hundred dollars for every such passenger, with sufficient sureties to the satisfaction of the selectmen of the town in which such passengers are landed, conditioned to indemnify and save harmless such town, and every town and county in the state, from all expenses which for three years thereafter may arise from such passengers, whose names shall be inserted in said bond. *Ibid.*, sec. 6.

7. If any master shall suffer any such passenger to land before such bond shall be given, unless the same shall be dispensed with by such selectmen on application therefor, he shall be punished by fine not exceeding two hundred dollars for each passenger so landed, or by imprisonment not exceeding one year. *Ibid.*, sec. 7.

8. Said bond shall be filed by the selectmen who approve the same in the office of the clerk of the court of common pleas for the county, and may by leave of the court be prosecuted for the benefit and at the expense of the party applying. *Ibid.*, sec. 8.

9. If any person shall bring and leave, or bring with intent to leave, any poor and indigent person having no visible means of support, into any county in this state from any other county in which such poor person may have resided or been supported, such poor person not having a legal settlement in any town, nor any relations chargeable for his support within the county into which such poor person is brought, knowing him to be thus poor and indigent, he shall be punished by fine not exceeding two hundred dollars, nor less than thirty dollars, or by imprisonment not exceeding six months. *Ibid.*, sec. 9.

10. Every such poor and indigent person may be removed from said county by order of the court of common pleas into the county from which he was brought as aforesaid. *Ibid.*, sec. 10.

11. The form of the indentures authorized by section 3 may be similar to those in sections 25 and 26 of the preceding chapter. The following alterations should be made: omit the words, "by the authority in them vested by law," and insert instead—*by the authority and in behalf of the court of common pleas for said county*; also, after the words, "residing in said town of H.," add the words—*and chargeable to said county*.

12. The form of the condition of the bond in section 6 may be :

Now the condition of this obligation is such, that whereas the said \_\_\_\_\_ is the master of a vessel having passengers on board who have no settlement within the state of New-Hampshire, the names of said passengers being as follows, viz. :

and whereas said master is desirous of landing said passengers in the town of P., in said state : Now if the said obligors shall indemnify and save harmless said town of P., and every town and county in said state from all expenses which for three years from and after the date hereof may arise from such passengers, then this obligation to be void : otherwise to remain in full force.

Signed, sealed and delivered in  
presence of us :

A. B. (*seal.*)

C. D. (*seal.*)

E. F. (*seal.*)

13. The form of a pauper account against a county may be :

The county of H. to the town of N., . . . *Dr.*

For the board of A. B., a county pauper,

twenty weeks, from \_\_\_\_\_ to \_\_\_\_\_, at

\$1.50 per week, . . . . . \$30.00.

(Make out the account as in a notice to a town.)

And the overseers of the poor of said town of N. hereby certify that the said A. B. was during the time specified in said account a poor person residing in said town, and unable to support himself, and was standing in need of relief, and that application was made to the town therefor ; that the sums charged in said account were actually expended for the relief and maintenance of the said A. B., and are in our opinion reasonable charges ; and that the said A. B. has no settlement in said town of N., nor any settlement in any other town in this state, or any relation in this state of sufficient ability chargeable with his maintenance, to our knowledge or belief.

N. L. } *Overseers of the Poor*  
R. G. } *in*  
S. T. } *N\_\_\_\_\_.*

An affidavit in common form of the truth of this certificate may be added.

Each court of common pleas establishes its own rules as

to the evidence required to sustain an account against the county. The statute requires "proper vouchers" to be filed with the account. If the supplies are furnished by the overseers, their affidavit is the best voucher. If money is paid to other persons, their receipts should be taken and filed in court. An affidavit may not always be required, but had better be added in all cases, as it strengthens the evidence of the claim.

14. For the provisions relative to the insane, see *ch.* 48.

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## CHAPTER 46.

### OF THE MAINTENANCE OF BASTARDS.

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|---|---|
| <ol style="list-style-type: none"> <li>1. Bastardy complaint, how made.</li> <li>2. Form of bastardy complaint.</li> <li>3. Form of warrant thereon.</li> <li>4. Bond required, how and when.</li> <li>5. Form of justice's order.</li> <li>6. Form of the bastardy bond.</li> <li>7. Form of the mittimus.</li> <li>8. Proceedings in court thereon.</li> <li>9. Mother may be a witness—when.</li> <li>10. Bond for support required.</li> <li>11. Town admitted to prosecute.</li> <li>12. Town may make complaint, when.</li> </ol> | <ol style="list-style-type: none"> <li>13. Proceedings on such complaint.</li> <li>14. Form of complaint by town.</li> <li>15. Costs for defendant, when.</li> <li>16. Respondent imprisoned, how discharged therefrom.</li> <li>17. Respondent absconding, what.</li> <li>18. Respondent to be brought back.</li> <li>19. Complaint, requisites of.</li> <li>20. Complaint, evidence under.</li> <li>21. Custody of child, mother's right.</li> <li>22. Settlement, when valid.</li> </ol> |
|---|---|

1. If any woman is pregnant with a child, which if born alive may be a bastard, she may make complaint in writing under oath to any justice of the peace in this state against any man, charging him with having begotten such child; and said justice may thereupon issue his warrant, commanding the person so charged to be brought before some justice of the peace in and for the county in which the offence is alleged to have been committed, or in which the person so charged may reside. *R. S., ch.* 68, *sec.* 1.

2. The form of the complaint in such case may be :

*To J. H., Esquire, one of the Justices of the Peace in and for the County of Hillsborough.*

Complains Ruth May, of B., in said county, single woman, that she is now pregnant with a child which, if born alive, may be a bastard, and that said child was begotten on the first day of May last, at the house of A. B., in said B., by John Smith, of said B.; therefore the said complainant prays that the said John Smith may be apprehended, and held to answer to this complaint, and further dealt with according to law.

RUTH MAY.

HILLSBOROUGH SS., *January 2, 1844.* Then appearing the said Ruth May made oath that the above complaint by her signed is in her belief true.

Before me,

*J. H., Justice of the Peace.*

3. The form of the warrant issued thereon, and attached to the complaint, may be :

#### STATE OF NEW-HAMPSHIRE.

HILLSBOROUGH SS. *To the Sheriff of said County, or his deputy, or any Constable of the town of B., in said County.*



Whereas Ruth May, of B., in said county, singlewoman, has made her complaint aforesaid to me, J. H., one of the justices of the peace in and for said county of Hillsborough, upon oath, against John Smith, of said B., housewright :

We command you, in the name of said state, to apprehend the said John Smith, and bring him before me, or some other justice in and for said county of Hillsborough, to answer to the said complaint. Hereof fail not.

Given under my hand and seal, this second day of January, in the year eighteen hundred forty-four.

*J. H., Justice of the Peace.*

The form of the return thereon may be :

HILLSBOROUGH SS., *January 6, 1844.* I have apprehended the within named John Smith, and now have him before J. H., esquire, as within commanded.

*M. G., Deputy Sheriff.*

The Revised Statutes have made some changes in the mode of proceedings. The complaint may be made before a justice in any county in which the complainant is dwelling at the time, and may be returned to and heard before any justice of the county. That the town in which he lives is interested, is no objection. If the offence was not committed in such county, and the person complained against resides in another county, the warrant is to be directed "to the sheriff or his deputy" of the county in which the offence was committed, or the offender resides, and the offender should be ordered to be carried before some justice of one of those counties. If the offence was committed in the county in which the complaint is made, the warrant should be directed "to the sheriff of said county," &c. (as in the form) and the offender ordered to be carried before some justice of the county in which the offence was committed, or in which the offender then resides. The justice before whom he is brought, on a hearing and proper evidence, may order him to give bond to appear at the term of the court of common pleas next to be holden in and for the county in which the offence was committed, as the trial must be in that county. If the offender has escaped from the county in which the complaint is made, the warrant should be directed as in the last case named, and the offender brought before some justice of the county in which he is arrested, who may order him sent back to the county in which the complaint was made, for examination.

4. The justice before whom such person shall be brought, if he see fit, may order such person to give bond to the complainant, in a reasonable sum, with sufficient surety or sureties, to the satisfaction of the justice, conditioned to appear at the term of the court of common pleas next to be holden within and for the county in which the offence is alleged to have been committed, to answer to such complaint, and to abide the order of said court thereon, and in default thereof may commit him until such order is performed. *R.S., ch. 68.*

5. The form of the examination and order may be :

HILLSBOROUGH ss. Be it remembered that on the second day of January, in the year eighteen hundred forty-four, Ruth May, of B., in said county, single woman, came before me, J. H., one of the justices of the peace in and for said county, and upon oath made her complaint that she is



now pregnant with a child. [Here copy the rest of the Complaint down to the word "*therefore.*"] Whereupon the said John Smith being afterwards, on the sixth day of January, brought before me, the said justice, by virtue of a warrant by me issued on said complaint, and after hearing all the proofs and allegations on the part of said Ruth May and John Smith respectively, it appearing to me that the said John Smith ought to be held to answer further to said complaint:

It is therefore ordered by me, the said justice, that the said John Smith give bond to the said Ruth May in the sum of four hundred dollars, with two sufficient sureties, conditioned that the said John Smith do appear at the term of the court of common pleas next to be holden at Amherst, in and for said county of Hillsborough, on the second Tuesday of April next, and there answer to said complaint, and abide the order of the court thereon; and that he stand committed until this order is performed.

J. H., *Justice of the Peace.*

The term of the court at which the offender is ordered to appear, should always be the one next to be holden in and for the county in which the offence is alleged to have been committed.

6. The form of the bond in such case may be:

Know all men by these presents, that I, John Smith, of B., in the county of H., as principal, and A. B. and C. D., of said B., as sureties, are holden and stand firmly bound unto Ruth May, of said B., single woman, in the sum of four hundred dollars, to the payment of which well and truly to be made to the said Ruth May we bind ourselves, our heirs, executors and administrators firmly by these presents. Witness our hands and seals, this sixth day of January, 1844.

The condition of the foregoing obligation is such, that whereas on the second day of January, 1844, the said Ruth May made complaint on oath to J. H., a justice of the peace in and for said county of H., that she was pregnant with a child which if born alive would be a bastard, and that said child was begotten on the first day of May, 1843, at the house of A. B., in said B., by the said John Smith; and whereas the said John Smith has been ordered by the said justice to appear at the term of the court of common pleas next to

be holden at Amherst, in and for said county of Hillsborough, on the second Tuesday of April next: Now if the said John Smith shall appear at said court at the time and place aforesaid, and shall answer to said complaint, and abide the order of the court thereon, then this obligation to be void; otherwise to be in full force.

Signed, sealed and delivered  
in presence of us :

John Smith. (*Seal.*)  
A. B. (*Seal.*)  
C. D. (*Seal.*)

7. The form of the mittimus to be made out in case the offender neglects to give bond, may be :

#### STATE OF NEW-HAMPSHIRE.

HILLSBOROUGH SS. *To the Sheriff of said County, or his deputy, or either of the Constables of the Town of B., in said County.*



Whereas on the second day of January, in the year eighteen hundred forty-four, Ruth May, of B., in said county, single woman, came before me, J. H., one of the justices of the peace in and for said county, and upon oath made her complaint that she is now pregnant with a child which if born alive may be a bastard, and that said child was begotten on the first day of May last at the house of A. B., in said B., by John Smith, of said B.:—Whereupon the said John Smith being afterwards, on the sixth day of January, brought before me, the said justice, by virtue of a warrant by me issued on said complaint, and after hearing all the proofs and allegations on the part of said Ruth May and John Smith respectively, it appearing to me that the said John Smith ought to be held to answer further to said complaint—It was therefore ordered by me, the said justice, that the said John Smith give bond to the said Ruth May in the sum of four hundred dollars, with two sufficient sureties, conditioned that the said John Smith appear at the term of the court of common pleas next to be holden in and for said county of Hillsborough, on the second Tuesday of April next, and there answer to said complaint, and abide the order of the court thereon, and to stand committed until said order be performed: And whereas the said John Smith has neglected to perform said order—

In the name of said state you are commanded to take

and convey the said John Smith to the common jail in said county, and deliver him to the keeper thereof; and the keeper thereof is required to receive the said John Smith into his custody in said jail, and him there safely keep until he give bond as aforesaid, or be discharged by due course of law. Herein fail not.

Given under my hand and seal, this sixth day of January, in the year eighteen hundred forty-four.

J. H., *Justice of the Peace.*

It will be observed that the greater part of the mittimus is a copy of the examination and order in *sec. 4*. The justice in making out a mittimus should always follow the record of the examination in the same manner, making such slight alterations as the sense or grammar may require. The directions and forms for these proceedings belong more properly, however, to a form book for justices.

8. Said justice shall make a certified copy of each paper in said case, and shall deliver the same to the complainant, or return the same to said court on or before the first day of the term aforesaid; and said complaint shall be entered at said term, and the person charged may be ordered to give bond as aforesaid to the satisfaction of the court, for his appearance at any future day or term, and to abide the order of the court. The complaint shall be tried by the court, unless either party requests a jury, in which case it shall be tried by a jury, and the issue shall be, *chargeable* or *not chargeable*. *R. S., ch. 68, sec. 3.*

9. Any woman who shall have made her complaint in the manner aforesaid, charging any man with being the father of the child, and stating the time when and the place where the same was begotten, and shall have declared in the time of her travail the same person to be the father of the child to the persons attending her, if any person did attend her, and shall have continued constant in such accusation, shall be a competent witness on the trial of such complaint, her credibility being left to the court or jury who try the cause; but no woman shall be admitted as a witness as aforesaid who shall have been convicted of any crime rendering her incompetent to testify in any other case. *Ibid., sec. 4.*

10. If any man is found chargeable as aforesaid, the court shall order him to pay such sum as they shall deem reasonable, to the mother of the child or to the selectmen of the

town liable by law for the maintenance of the child, to be applied for such maintenance, and also to pay costs of prosecution, and may order him, or the mother, or both, to give security to save such town harmless from all charge for the maintenance of such child. Any person who shall neglect or refuse to obey any such order may be committed until the same is obeyed. *Ibid.*, sec. 5.

11. If any woman, after having made her complaint as aforesaid, shall abandon the same, the town liable by law as aforesaid shall, upon application to the court or justice in writing, made for that purpose by their selectmen, agent or attorney, be admitted to prosecute said complaint, a record whereof shall be made, and all subsequent proceedings thereon shall be the same as if said complaint had been instituted originally by such town. *Ibid.*, sec. 6.

12. If the mother of a bastard child neglects or refuses to make complaint as aforesaid, or having made a complaint shall neglect to prosecute the same in the court aforesaid, or shall, in the opinion of the selectmen of any town liable by law as aforesaid, make a false complaint, any justice of the peace, to whom complaint may be made by said selectmen against any man, charging him with having begotten such bastard, may issue his warrant, under his hand and seal, directing such person to be brought before some justice of the peace in and for the county in which the offence was committed, or in which such offender may reside. *Ibid.*, sec. 7.

13. Such complaint shall be in the name of such town, and the proceedings thereon shall be the same in all respects as if the mother had complained as aforesaid. If found chargeable, he shall be ordered to give security to save the town harmless from the maintenance of such child, and to pay all costs of prosecution, and to stand committed until said order shall be performed. *Ibid.*, sec. 8.

14. The form of the complaint made by the selectmen may be:

*To J. H., Esquire, one of the Justices of the Peace in and for the County of Hillsborough.*

Complains the town of N., in said county, by A. B. and C. D., selectmen of said town, that one Ruth May, of said N., is now pregnant with a child, which if born alive may be a bastard and become chargeable to said town of N., and that said child was begotten on or about the first



day of May last, in said town of N., by John Smith of said N., and that the said Ruth May refuses to make complaint against the said John Smith according to the statute in such case made and provided. Wherefore your complainant prays that the said John Smith may be apprehended and held to answer to this complaint, and further dealt with according to law.

A. B.

C. D.

HILLSBOROUGH ss., *January 2, 1844.* Then appearing the said A. B. and C. D. made oath that the foregoing complaint by them signed is in their belief true. Before me,

J. H., *Justice of the Peace.*

The warrant and other proceedings may be similar to those in case of a complaint made by the woman herself, with such slight alterations as the difference of the parties may require. The bond should run to the town.

If the complaint by the town is not made until after the birth of the child, omit the words—"is now pregnant with a child, which if born alive may become," and insert instead—*on the first day of February last was delivered of a male child, which was and is still living, and is a bastard, and is—*

If the mother has made a complaint and neglected to prosecute it, omit the words, "refuses to make complaint against the said John Smith," and insert instead—*having made a complaint against the said John Smith, has neglected to prosecute the same in the court of common pleas—*

15. When any town is a party to such prosecution, and the party accused shall be found not chargeable, he shall recover his costs against such town. *Ibid.*, sec. 9.

16. If any person, committed to prison by virtue of this act, is poor and unable to pay such sum, or to procure such security as may be ordered, said court may, on application for that purpose, discharge such person from imprisonment at such time and upon such terms as they shall think expedient. *Ibid.*, sec. 10.

17. Whenever a warrant shall be issued as aforesaid by any justice, and the person charged therein shall, either before or after the issuing thereof, escape or go out of the county, the sheriff thereof or his deputy, or any constable of the town to whom such warrant shall be directed, may pursue such person and apprehend him in any county in this state, and carry him before any justice in and for the county



in which he was so apprehended, for examination. *Ibid.*, sec. 11.

18. If it shall appear to said justice that said warrant was duly issued, and that such person did escape or go out from such other county as aforesaid, he shall issue his warrant thereupon, directed to such sheriff, deputy or constable, commanding such officer to carry such person before some justice in and for the county from which he has so escaped or gone out, for trial, and that such further proceedings may be had thereon as the law requires. *Ibid.*, sec. 12.

19. The complaint, when made by the woman, must be sworn to before the birth of the child, but may be made by the town afterwards. The trial, in either case, need not be until after the birth of the child. In order to entitle the woman to be a witness in her own behalf on a complaint by her made, she must make a declaration during her travail (that is, before delivery—5 *Pick. R.*, 63; 6 *Greenleaf R.*, 460,) that the person charged is the father of the child, and continue constant in the accusation, and this must be done in the presence of one or more witnesses. The mother cannot testify that she made such declarations. 5 *Pick. R.*, 63. But she may be a witness in behalf of the town without such declaration, and the town may come in and take up her complaint, and prosecute it at any stage of the proceedings, so as to make her a witness. 3 *N. H. R.*, 141.

20. If the mother marry before a prosecution, the husband should join in the complaint. 16 *Maine R.*, 38; the object is to compel the real father to support the child. And the statute of limitations is no bar to such a prosecution. 16 *Maine R.*, 38. If the mother dies before a hearing, her dying declarations may be used in evidence. 3 *N. H. R.*, 161. By "*continuing constant in such accusation*" is to be understood, stating the same person, and no other, to be the father of the child, from the time of making oath to her complaint up to the time of the trial. 8 *Pick. R.*, 560. Evidence that she had previously accused other persons, is admissible to impeach her credibility as a witness, but evidence that she was unchaste, or had had connection with other men, is not admissible in Massachusetts. 3 *Pick. R.*, 194; 4 *Vermont R.*, 281. The selectmen of a town which is interested may be witnesses, even if they made the complaint. 5 *Conn. R.*, 416. And depositions are admissible. 6 *Pick. R.*, 104; 2 *Conn. R.*, 357.

21. The mother of an illegitimate child has a right to the custody and control of the child as against the putative father, and is bound to maintain it, as its natural guardian. *S N. H. R.*, 417. And when the putative father has given a bond to indemnify the town against liability for the maintenance of an illegitimate child, he cannot relieve himself from his liability to the town by demanding the child at the age of twenty-two months, and offering to maintain it; the mother refusing her assent to part with the child. *Ibid.*

22. A settlement between the father and mother of the child, and a release of all damages by the mother, will not discharge the father from his liability to the town for the maintenance of the child. The settlement, however, as between the parties is good, and a note given thereon is valid, there being in law a valuable consideration therefor.

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## CHAPTER 47.

### OF THE GUARDIANSHIP OF SPENDTHRIFTS AND INSANE PERSONS.

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| <ol style="list-style-type: none"> <li>1. Guardian for insane appointed.</li> <li>2. Meaning of word, "<i>insane</i>."</li> <li>3. Form of application in sec. 1.</li> <li>4. Form of notice to defendant.</li> <li>5. Form of inquisition.</li> <li>6. Duties of selectmen therein.</li> <li>7. Proceedings in probate court.</li> <li>8. Guardian for spendthrift.</li> </ol> | <ol style="list-style-type: none"> <li>9. Proceedings in probate court.</li> <li>10. Form of complaint in sec. 6.</li> <li>11. Notice of appointment given.</li> <li>12. Duties of guardians.</li> <li>13. Contracts, when void.</li> <li>14. Contracts, when ratified.</li> <li>15. Guardian, when removed.</li> <li>16. Guardianship, how revoked.</li> </ol> |
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1. Upon application by any relative or friend of any insane person, or upon the like application of the overseers of the poor of the town in which such person lives, made to the judge of probate for the county in which said town is situate, that a guardian may be appointed over such person, the judge shall cause the selectmen of the town in which

such person lives to make inquisition thereinto. *R. S., ch. 150, sec. 10.*

2. The word "*insane*," as used in this section and in section 4, includes "*an idiot, a non compos, lunatic or distracted person.*" *R. S., ch. 1, sec. 15.* If the person named in the application belongs to either of these classes, he should nevertheless be styled in it *insane*.

An *idiot* is one who has a natural imbecility of mind; one who is without the power of reason, either partially or wholly, by a perpetual infirmity from his birth.

A *lunatic*, or distracted person, is one who has a partial or total derangement or excitement of the mind, generally arising after birth. The word *non compos* includes not only lunatics, but persons who lose their intellects by disease, or in some other mode, after birth.

There is a class of persons who are incapable of managing their own affairs properly, who do not come within either of the above classes strictly, or within the words of the statute, such as those who are rendered incapable from the infirmities of body or age. If the infirmities of such person are such as to impair his mind essentially, he may be deemed a *non compos*. *Probate Directory, 352.* The memory of a man may be greatly impaired, and he still retain his reason and not be a *non compos mentis*. 4 *N. H. R.*, 68.

3. The form of the application in such case may be :

*To the Honorable L. W., Judge of Probate for the County of Hillsborough.*

The subscribers, overseers of the poor of the town of N., in said county, respectfully represent that A. B., a person living in said town, is an insane person, and incapable of taking care of himself; we therefore request that you will cause inquisition thereinto to be made, and a guardian for the said A. B. to be appointed, according to the law in such cases made and provided.

A. B. } *Overseers of the Poor*  
C. D. } *of*  
E. F. } *N———.*

*N———, May 1, 1844.*

4. The selectmen should give notice to the person named in the warrant of inquisition seasonably, of the time and

place of making such inquisition, as it is a question involving the enjoyment of his liberty and property, and he has a right to be heard thereon. A week's notice would be sufficient in any case; in some cases a day or two would be seasonable notice. 14 *Mass. R.*, 222.

The form of the notice may be :

*To C. D., of E.*

You are hereby notified that we, the subscribers, will attend at the dwelling-house of G. H., in said E., on Tuesday, the tenth day of July instant, at ten o'clock in the forenoon, for the purpose of making an inquiry into your case, according to the directions and for the object contained in the foregoing warrant to us directed, at which time and place you may attend, and be heard thereon.

Given under our hands, this third day of July, 1843.

E. L.	} <i>Selectmen</i>
T. G.	
H. J.	
	<i>of</i>
	<i>E—.</i>

This notice should be made on the warrant, and an attested copy of the warrant and notice given to the insane person, and affidavit of the service of the notice made on the original.

5. The selectmen should make careful enquiry and examination, not only of the person named in the application, but of other persons, as to the capacity of such person; and if satisfied that he belongs to either of the classes described in sec. 2, and is incapable of taking care of himself and his property, should make return of their inquisition on the back of the order to the judge of probate, as follows :

*To the Honorable L. W., Judge of Probate for the County of Hillsborough.*

The subscribers, selectmen of the town of N., in said county, in compliance with the within order, having gone to the within named A. B., and made of him a careful enquiry and examination by the best means in our power as to his capacity, and as to his being an insane person, and incapable of taking care of himself, and having made careful inquisition thereinto by the examination of other persons,

we are of the opinion that the said A. B. is an insane person, and incapable of taking care of himself.

In witness whereof we have hereunto set our hands, this tenth day of May, 1844.

G. H. } *Selectmen*  
 E. T. } *of*  
 L. B. } *N\_\_\_\_\_.*

6. "It is clearly the duty of selectmen in these cases to go to the person to whom the inquisition relates, and there diligently inquire as to his capacity. In many cases there can be no difficulty in ascertaining the fact, but in some cases there may be doubt. The state of a man's mind can be known only from what he does and from what he says. Generally a conversation for a short time with the person would enable selectmen to settle the fact. Where that is found not satisfactory, they should inquire into his conduct and his management of affairs, by witnesses under oath. When they have found the fact, whether *insane* or *not insane*, (whether he belongs to either of the classes mentioned in sec. 2,) they should distinctly return it to the judge of probate." 4 *N. H. R.*, 68. Evidence that he is old or less careful of his property, is not sufficient. 8 *Mass. R.*, 129; or that his memory is impaired, without saying that his reason is impaired. 4 *N. H. R.*, 68.

7. If upon the return of such inquisition, and due examination had, it shall be decreed that such person is insane, the judge shall appoint a guardian over such person; but no such decree or appointment shall be made until such person shall have been cited to appear and show cause against the same. *R. S.*, ch. 150, sec. 11.

8. Any person who by excessive drinking, gaming, idleness, debauchery, or vicious habits of any kind, shall so waste, spend, or lessen his estate, or shall so neglect to attend to any useful calling or business for which he may be capable, as thereby to expose himself or his family, or any of them, to want or suffering circumstances, or to endanger or expose the town to which he belongs, in the judgment of the selectmen of the town in which he resides, to expense for the support of himself, or any of his family, shall be deemed a spendthrift. *Ibid.*, sec. 12.

No person is a "*spendthrift*," within the meaning of this section, however idle or extravagant he may be, unless he thereby exposes himself or family to want, or the town to



expense for the support of himself or family. The object of these provisions is solely the prevention of pauperism.

9. Upon complaint thereof in writing made to the judge of probate for the county where such person resides, by said selectmen, said judge shall appoint a day of hearing; and if, upon due notice and examination had, it shall appear that such person comes within the description in the preceding section, said judge shall appoint a suitable person to be guardian over such spendthrift. *Ibid.*, sec. 13.

10. The form of a complaint, under sec. 6, may be :

*To the Honorable the Judge of Probate for the County of Hillsborough.*

The subscribers, selectmen of the town of N., in said county, respectfully represent that in their judgment T. B., of said N., does by excessive drinking, so waste, spend or lessen his estate as thereby to expose himself or his family to want or suffering circumstances, and also to endanger and expose said town of N. to expense for the support of himself or family.

They therefore pray that your Honor would appoint some person or persons as guardian or guardians to the said T. B., agreeably to the law of the state in such case made and provided.

Dated at said N., this first day of May, 1843.

T. F. } *Selectmen*  
W. S. } *of*  
J. T. } *N——.*

If the cause is any other than "*excessive drinking*," it should be stated distinctly in the complaint, and more than one cause may be stated in the complaint. Evidence of the facts so stated should be furnished to the court of probate, and this is done in most cases by witnesses produced at court at the time and place of hearing. Depositions may sometimes be used.

11. Every such guardian shall give bond to the judge of probate; shall give notice of his appointment, by posting up a notice thereof in the town; shall return an inventory, and take care of his ward as provided in the *R. S.*, ch. 150.

12. Every guardian appointed over any spendthrift shall inculcate habits of sobriety and industry in his ward, and may employ his ward, or the children of his ward, in any

suitable labor, or bind them out to labor, by a written contract for a term not exceeding one year. *Ibid.*, sec. 19.

13. No bargain or sale of real or personal estate, and no contract of any nature whatever, made by a person under guardianship, after the appointment made and during the continuance of such guardianship, shall be valid in law. *Ibid.*, sec. 20.

14. No such bargain, sale or contract shall be valid, if made after an attested copy of any complaint presented to a judge of probate upon which a guardian shall be appointed, and the order of notice thereon, shall have been filed with the clerk of the town in which the person complained of resides, unless the guardian, by an instrument under his hand and seal, shall afterwards approve and ratify the same. *Ibid.*, sec. 21.

15. The judge, upon petition and after due notice, may remove any guardian, whenever in his opinion it may be necessary or expedient, and appoint another in his stead. *Ibid.*, sec. 29.

16. If the cause for which any guardianship was granted has ceased or is removed, such guardianship, upon like petition and notice, shall be revoked. *Ibid.*, sec. 30.

## CHAPTER 48.

OF THE DUTY OF SELECTMEN RELATIVE TO  
APPRENTICES AND INSANE PAUPERS.

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|------------------------------------|--|
| 1. Minors, how bound out.          | 12. Form of petition in such case.                     |
| 2. Indentures, requisites of.      | 13. Insane in jail, when sent.                         |
| 3. Indentures, by whom kept.       | 14. Insane town pauper, how sent.                      |
| 4. Form of indentures.             | 15. Insane county pauper, how sent.                    |
| 5. Form of approbation thereon.    | 16. Expense of support recovered.                      |
| 6. Duty to protect apprentice.     | 17. Insane sent by friends, when.                      |
| 7. Form of complaint therefor.     | 18. Form of bond to the hospital, and general remarks. |
| 8. Form of warrant thereon.        |  |
| 9. Proceedings before justice.     |  |
| 10. Form of justice's order.       |  |
| 11. Insane sent to hospital, when. |  |

1. Children under the age of fourteen years may be bound as apprentices or servants until that age, without their consent, by their father, if living, or if not living by their mother or guardian; and if such child has no parent or guardian, he may bind himself, with the approbation of the selectmen or overseers of the poor of the town where he resides. *R. S., ch. 151, sec. 1.*

The Revised Statutes seem to have made some changes in the laws relative to binding out minors with the approbation of the selectmen. No such approbation seems to be made necessary by the statute, except in cases where the minor is "under the age of fourteen years," and "has no parent or guardian," and the binding out can only be "until that age," fourteen years. It may be proper enough, however, to certify their approbation on any indentures of a minor having no parent or guardian. Formerly the statute required an approval in such cases, and authorized a binding out until the age of twenty-one; when the minor arrives at the age of fourteen new indentures may now be necessary.

2. No minor shall be bound as aforesaid except by an indenture of two parts, signed, sealed and delivered by both parties; and when the minor shall bind himself, with the approbation of the selectmen or overseers of the poor as aforesaid, such approbation shall be certified in writing, signed by them on each part of the indentures. *Ibid., sec. 3.*

3. One part of said indentures shall be kept by the master

or mistress, and the other part by the parent or guardian of the minor ; or, if approved by the selectmen or overseers of the poor, by the town-clerk of the town, in trust for said minor. *Ibid.*, sec. 4.

4. The form of the indenture, in sec. 1, may be :

This indenture, made between A. B., a minor under the age of fourteen years, having no parent or guardian, and residing in the town of N., in the county of H., of the one part, and C. D., of said N., of the other part,

WITNESSETH :

That the said A. B., with the approbation of the selectmen of said N., hath bound and doth hereby bind himself unto the said C. D., as an apprentice to learn the trade and business of a farmer, and to live with and serve him faithfully as an apprentice from the date hereof until the tenth day of June, in the year eighteen hundred forty-five, at which time he will be of the age of fourteen years ; and during all said time he shall obey the lawful commands of his said master, and conduct himself as a faithful apprentice ought to do.

And the said C. D. on his part, for the consideration aforesaid, covenants that he will faithfully teach his said apprentice, or cause him to be taught, the said trade or business of a farmer, in the best manner he can, and will cause him to be taught to read, write and cipher, and will furnish him with proper and sufficient clothing, food and necessaries, both in sickness and in health during said term. [Here insert any other conditions.]

In witness whereof the said parties have hereto set their hands and seals, the first day of May, eighteen hundred and forty-three.

Signed, sealed and delivered  
in presence of us :

A. B. (seal.)  
C. D. (seal.)

5. The form of the selectmen's approbation, which may be put on the back of each part of the indentures, may be :

This certifies that we, the subscribers, selectmen of the town of N., have examined the within indentures executed by A. B. and C. D., and the agreements therein contained, and we hereby certify our approbation of the same.

Witness our hands, at said N., this first day of May, 1843.

T. D. } *Selectmen*  
C. P. } *of*  
L. G. } *N—.*

6. All parents, guardians, selectmen or overseers, as the case may be, shall enquire into the usage of the minors bound out as aforesaid, and defend them from the cruelty, neglect or breach of covenant of the master; and may make complaint thereof to any justice, who shall notify the parties, and hear and determine such complaint. *R. S., ch. 151, sec. 7.*

7. The form of the complaint in such case may be :

*To J. H., Esquire, one of the Justices of the Peace in and for the County of H.*

Complain T. D., C. P. and L. G., selectmen of the town of N., in said county, that A. B., a minor, under the age of fourteen years, having no parent or guardian, and residing in said town, with the approbation of the selectmen of said town, on the first day of May, in the year eighteen hundred forty-three, bound himself by indenture to C. D., of said N., as an apprentice to learn the trade or business of a farmer, from that date until the tenth day of June, in the year eighteen hundred forty-five, at which time he will be of the age of fourteen years; wherein in consideration of covenants on the part of the said A. B., the said C. D. did covenant that he would faithfully teach or cause him to be taught the trade or business of a farmer: (here insert all the covenants of C. D. in the indentures which are broken;) and the said A. B., on said first day of May, went to reside with the said C. D., and has resided with him and served him faithfully ever since that time; and during all said time has obeyed all the lawful commands of his said master, and conducted himself as a faithful apprentice ought to do; yet the said C. D., unmindful of his said covenants, has neglected to cause said apprentice to be taught to read, write and cipher; (or set out the ill conduct of the master complained of,) all which is against the peace and dignity of the state, and contrary to the statute in such case made and provided: Wherefore your complainants pray process that the said C. D. may be directed to appear before you, and shew cause why the said A. B. should not be discharged from his said indentures, and from the service of said C. D., and also recover of said C. D. his damages by him sustained by reason of the breach of covenant of the said C. D., and costs.

T. D. } *Selectmen*  
C. P. } *of*  
L. G. } *N——.*



H ss., *May 10, 1844.* Then appearing the said T. D. and C. P., made oath that the foregoing complaint by them signed is in their belief true. Before me,  
J. H., *Justice of the Peace.*

The complaint should name the parties and set out the promises on both sides, as near as may be in the words of the indenture, and the matter complained of should be distinctly stated. Compare the complaint in this section with the indentures in section 4.

8. The form of the warrant in such case may be :

THE STATE OF NEW-HAMPSHIRE.

HILLSBOROUGH ss. *To the Sheriff of said County, or his deputy, or either of the Constables of the town of N., in said County.*



Whereas complaint has been made to me, J. H., one of the justices of the peace in and for said county, upon oath as aforesaid, against C. D. of said N. : In the name of said state you are commanded to summon the said C. D. to appear before me, at my dwelling-house in said N., on the twenty-fifth day of May instant, to answer to said complaint, by giving to the said C. D. in hand, or leaving at his usual place of abode, a true and attested copy of said complaint and of this order thereon, fourteen days before said day of hearing. Hereof fail not, and make due return thereof.

Given under my hand and seal, this tenth day of May, in the year eighteen hundred forty-three.

J. H., *Justice of the Peace.*

9. If the complaint is supported, the justice may render judgment that such minor be discharged from his said indentures, and that the master shall pay all damages sustained by the minor from such neglect, cruelty or breach of covenant ; but if said complaint is not sustained the justice shall award costs to the respondent ; and in either case execution may issue therefor. *R. S., ch. 151, sec. 8.*

10. The form of the justice's record of conviction may be :

HILLSBOROUGH ss. Be it remembered that on the twenty-fifth day of May, in the year eighteen hundred forty-three, at a justice court holden before me, J. H., one of the jus-

tices of the peace in and for said county, at my dwelling-house in N., in said county, to hear and determine upon the complaint on oath of T. D., C. P. and L. G., selectmen of said N., for that A. B., a minor, [Here copy the rest of the complaint.] And on the said twenty-fifth day of May, the said C. D. having been duly notified, both parties appeared, and the said C. D. having pleaded not guilty to said complaint, and having heard all the proofs and allegations, both on the part of the said selectmen and of the said C. D., it appearing to me that the complaint is just and true: It is therefore ordered by me, the said justice, that the said A. B. be discharged from the obligation of his said indenture and from the service of the said C. D., and that the said complainants recover of the said C. D. for the use of said A. B. the sum of fifty dollars, for damages by him sustained by reason of the aforesaid breaches of his covenant on the part of the said C. D., and also costs of this prosecution, taxed at ten dollars thirty-three cents.

J. H., *Justice of the Peace.*

Execution for costs and damages may be issued in the common form.

11. If any insane person is in such condition as to render it dangerous that he should be at large, the judge of probate, upon petition by any person, and such notice to the selectmen of the town in which such insane person is, or to his guardian or any other person, as the judge may order, which petition may be filed, notice issued, and a hearing had in vacation or otherwise, may commit such insane person to the asylum. *R. S., ch. 9, sec. 11.*

12. The petition in such case may be as follows:

*To the Honorable L. W., Judge of Probate for the County of H.*

Respectfully represents A. B., of F., in said county, that C. D., of said F., is an insane person, and is now in such condition as to render it dangerous that he should be at large: Your petitioners therefore request your Honor to cause notice to be issued on this petition, and a hearing thereon had as soon as may be, and that upon proceedings duly had the said C. D. may be ordered to be committed to the New-Hampshire Asylum for the Insane, according to the law in such cases made and provided.

F, May 1, 1843.

A. B.

The proceedings on such petition will be regulated by the judge of probate, on proper evidence. If the petition is not signed by some near relative, it had better be signed by several individuals, some of whom are known to the judge, if convenient ; as such a petition would meet with more consideration, and negative all ideas of improper management.

12. If any insane person is confined in any jail, the court of common pleas may order him to be sent to the asylum, if they shall think it expedient. *R. S., ch. 9, sec. 12.*

14. Any insane pauper supported by any town may be sent to the asylum by the order of the overseers of the poor of such town, and there supported at the expense of such town ; and such expense may be recovered by such town of the county, town or person chargeable with the support of such person, in the same manner as if he had been supported in and by the town. *Ibid., sec. 13.*

15. If the overseers neglect to make such order in relation to any insane county pauper, the court of common pleas or any two judges thereof, in vacation, may order such pauper to be sent to the asylum, and there supported at the expense of the county. *Ibid., sec. 14.*

If the overseers neglect, some individual should apply to the court for this purpose, and procure an order.

16. Any insane person committed to the asylum by any court or judge of probate shall be supported by the county from which he was committed, and any sum so paid may be recovered by the county of any county, town or person chargeable with his support. *Ibid., sec. 15.*

17. The parent, guardian or friends of any insane person may cause him to be sent to the asylum, with the consent of the trustees, and there supported on such terms as they may agree. *Ibid., sec. 16.*

18. When a pauper is received into the Insane Hospital, a bond for the payment of his board is required, with sufficient sureties, and a certificate from the selectmen, or some person, that the signers are responsible for the amount of the bond. The form of the bond is as follows :

Whereas A. B., of N., in the county of H., and state of New-Hampshire, a lunatic, has been admitted as a boarder in the New-Hampshire Asylum for the Insane, I, C. D., of said N., as principal, and we, E. F. and G. H., of said N., as sureties, do jointly and severally promise to pay to the said Asylum two dollars and twenty-five cents per week for

the board of the said A. B. at said Asylum, for the term of thirteen weeks (if he has been insane less than one year,) or for the term of twenty-six weeks, (if he has been insane more than one year,) unless sooner cured, or in the opinion of the superintendent had better leave the Hospital, and for as much longer period as he shall remain at said Asylum; and also to pay such reasonable extra charges as may be occasioned by the said A. B. requiring more than ordinary care and attention, and for damage by said A. B. done to the property of said Asylum, not exceeding in any case twenty-five dollars; and to assist in returning the said A. B. to the said Asylum in case he shall escape therefrom, and to remove said A. B. from said Asylum when required to do so by said superintendent; and to pay funeral charges in case of death, and to make said payments quarterly.

Witness our hands and seals this            day of           , 184 .

C. D. (*seal.*)

E. F. (*seal.*)

G. H. (*seal.*)

We, the subscribers, hereby certify that the obligors of the above bond are amply responsible for the performance of the agreements therein contained, and we have no doubt that it will be promptly and fairly complied with.

D. D.

L. B.

The price now fixed for board at the N. H. Asylum at Concord is \$2.25 per week. This is very much lower than the price usually charged in such cases. It is a great object with towns and individuals to send the insane in the early stages of the disease, and the earlier the better. In recent cases, as where the patient is sent to the hospital within six months after the first attack, nearly ninety out of every hundred may be cured. If it is delayed longer, the chance of cure will be growing less and less yearly, till after the disease has been seated several years not more than one in three or four recover.

Insanity is now proved to be a disease of the brain, and curable like other diseases, by skilful treatment. When the mind becomes excited, however, it is important to remove the person from the scenes and persons which are familiar, to some place where he may be kept quiet and comfortable. The insane often consider their nearest friends to be their enemies, and the sight of them increases their

insanity, by keeping them constantly excited. In such cases the fears of friends are alarmed, and the insane are sometimes subjected to cruelties and hardships which are dreadful. Such cruelty is entirely unnecessary if the patient is removed to the Hospital; not one in a hundred have any restraint at all imposed on them, and the severest is a muffle on the hands to prevent injury.

The price of board is only such as, when the Hospital is full of patients, will barely defray its expenses. No trustee receives any compensation for his services. The Hospital is the property of the state and under its care. It is a charitable institution, and will be a blessing to the class of sufferers for whom it was designed. There are now eight public hospitals in the New-England states, and so beneficial and satisfactory have been their results that others are now called for and will soon be erected.

When we consider that insanity does not shorten life, that it grows worse by delay, that the insane are generally objects of fear or disgust, that towns and individuals possess no proper places for their safe and comfortable keeping, that cruelty is and must be practised towards them, and that they may be rendered comfortable, safe and happy, and perhaps restored to their right mind at a small expense, it is manifest that not only charity to the insane, but even a true economy requires that they should be sent to the Hospital. "What ye would that others should do to you, do ye even so to them."



## TITLE VII.

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### OF THE PRESERVATION OF PEACE, HEALTH AND GOOD ORDER IN TOWNS.

CHAPTER 49. Of fires and firewards.

CHAPTER 50. Of police regulations.

CHAPTER 51. Of houses of correction and the punishment  
of idle and disorderly persons.

CHAPTER 52. Of police officers, constables and watchmen.

CHAPTER 53. Of licensed taverners and retailers.

CHAPTER 54. Of Sunday and religious meetings.

CHAPTER 55. Of the safe keeping of gun-powder.

CHAPTER 56. Of nuisances and contagious diseases.

CHAPTER 57. Of shows and exhibitions.

CHAPTER 58. General provisions relating to this Title.

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### CHAPTER 49.

#### OF FIRES AND FIREWARDS.

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|--|------------------------------------|
| 1. Organization of board.                              | 13. Tenant's remedy for expense.   |
| 2. Duties and badge at fire.                           | 14. Building removed to stop fire. |
| 3. Power over engines and persons.                     | 15. Damage therefor paid.          |
| 4. Fires in streets removed.                           | 16. How recovered of town.         |
| 5. Penalty for not obeying fireward or assuming badge. | 17. Building, notice to repair.    |
| 6. Stealing at fires.                                  | 18. If owner resides out of town.  |
| 7. Regulations for fires made.                         | 19. Repairs made by firewards.     |
| 8. Breach thereof, penalty.                            | 20. Repaired without notice,—when. |
| 9. Enginemen appointed.                                | 21. Building ruinous, torn down.   |
| 10. Term of office and exemption.                      | 22. Money to firewards advanced.   |
| 11. Buckets and ladders required.                      | 23. Penalties, how recovered.      |
| 12. Provided by firewards, when.                       | 24. This chapter, when enforced.   |
|  | 24. Powers of firewards.           |

1. The firewards of each town shall choose a chairman

and clerk, whose signature to any notice or other writing required to be given by the firewards shall be valid and sufficient. *R. S., ch. 111, sec. 1.*

No mode of organizing the board of firewards is provided. It seems proper, however, that the choice of chairman and clerk should be made at a meeting of the firewards, at which all should be notified to attend, and the choice should be actually made by a majority of the whole number. A certificate of the choice, signed by a majority of the firewards, and left with the clerk, will perhaps be the best evidence of such choice, and may be as follows :

*To whom it may concern :* This certifies that A. B. has been chosen chairman, and C. D. clerk of the board of firewards of the town of N. for the year ensuing.

E. T.	} <i>Firewards</i> <i>of said</i> <i>town of N.</i>
G. H.	
I. J.	

N—, *March 15, 1843.*

The clerk should keep a record of all the proceedings of the board and of all notices and appointments made by the board, and sign the same like other clerks.

2. The firewards shall forthwith repair to the place where any fire may break out, with their badge of office, which shall be a pole five feet long painted red, and exert themselves, and require assistance from all persons present, to extinguish and prevent the spreading of such fire, and to remove all property endangered thereby, and appoint guards to take care thereof, and suppress all tumults and disorders with force if necessary. *Ibid., sec. 2.*

3. They shall have at all times the control of all fire-engines, fire-hooks, hose and other implements designed or used for the extinguishment of fire in such town, and the control of all persons appointed to serve in any engine, axe or hose company, or other association whose duty shall be to aid in extinguishing or preventing the spreading of fire, in all things appertaining to their appointment, and power to direct and control the labor of all persons present at any fire. *Ibid., sec. 3.*

4. Any fireward may and shall cause any fire deemed by him to be dangerous, in any street or on any wharf, to be extinguished or removed. *Ibid., sec. 4.*

5. If any person present at any fire shall neglect or refuse to obey the commands of the firewards, or any of them, or shall unlawfully assume the badge of office of any fireward, he shall be liable to a penalty of not less than five nor more than fifty dollars. *Ibid.*, sec. 5.

6. If any person at any fire shall plunder, embezzle, convey away or conceal any goods or property, and shall not forthwith deliver the same, or give information thereof to the owner, if known, otherwise to one of the firewards or selectmen, he shall be deemed guilty of larceny. *Ibid.*, sec. 6.

7. The firewards of any town may establish such regulations respecting the kindling, guarding and safe keeping of fires, for the prevention and extinguishment of fires, and for the removal of shavings and other combustibles from any building or place, as they shall think expedient. Such regulations shall be signed by the major part of the firewards, recorded by the town-clerk, and copies of such record, attested by the town-clerk, posted up in two or more public places in the town, thirty days before they shall take effect. *Ibid.*, sec. 7.

The form of such regulations may be :

*Regulations established by the Firewards.*

By virtue of the authority in us vested by law, we, the subscribers, a majority of the firewards in the town of N., in the county of H., do establish the following regulations respecting the kindling, guarding and safe keeping, and for the prevention and extinguishment of fires, to be in force in said town.

I. No person shall place or keep any ashes in any wooden vessel, under a penalty of ten dollars for each offence.

II. No person shall keep any friction matches, except in a vessel of metal, or in some incombustible place, under a penalty of ten dollars.

III. No person, &c. &c.

Given under our hands at N., this first day of April, 1843.

P. G.	} <i>Firewards of the town</i>
H. L.	
M. O.	
	<i>of</i>
	<i>N_____.</i>

A true copy.

Attest: R. M., *Town-Clerk.*

8. Penalties, not exceeding twenty dollars for each offence, may be prescribed by the firewards for the breach of such regulations, and such regulations shall remain in force until altered or annulled by law, or by the firewards of the town. *Ibid.*, sec. 8.

9. The firewards shall appoint enginemen and hosemen, not exceeding eighteen to each engine or hose company. If a greater number is necessary to any engine, in the judgment of the selectmen, the firewards, with the selectmen, may appoint not exceeding twenty-two additional men. They shall be appointed by warrant, signed by the chairman and clerk of the firewards, and by the selectmen when they join in the appointment, and recorded by such clerk. *Ibid.*, sec. 9.

The form of the appointment by the firewards may be :

At a meeting of the firewards of the town of N., duly holden, the following persons, viz., A. B., C. D., E. F., (insert all the names) were appointed members of Engine Company No. 1, in said town, for the ensuing year, and until discharged according to law.

Witness our hands at N., this first day of April, 1843.

P. P., *Chairman of said Firewards.*

N. L., *Clerk of said Firewards.*

If the selectmen unite in the appointment, after the words, "at a meeting of the firewards," add—*and selectmen*—and they should also sign the certificate of appointment. The certificate should be recorded by the clerk of the firewards.

10. Such appointments shall continue in force until they shall resign, remove from town, or be discharged by the firewards and such discharge recorded by their clerk; and they shall be exempted from serving on juries and from military duty, as provided in the law relating to the militia. *Ibid.*, sec. 10.

11. Every house or building with fire-places or stoves, shall have thereon a good secure ladder or ladders, reaching from the ground to the ridge-pole, and shall be provided with one leathern bucket, of such size and form as the firewards may prescribe, for every two fire-places or stoves in such house; and if the owner shall not provide and keep in repair such buckets and ladders, he shall be liable to a penalty of six dollars for every three months' neglect. *Ibid.*, sec. 11.

12. In case of such neglect, the firewards may give notice to the owner, or to the occupant, if the owner is unknown or does not reside in town, to provide such buckets and ladders; and if the same shall not be provided within thirty days after, they shall provide the same at the expense of the town, and the town may recover the same of the owner, or of the occupant, if the owner is unknown or does not reside in town, by an action of debt, to be brought by the firewards in the name of the town. *Ibid.*, sec. 12.

The form of such notice may be :

*To A. B., of C.*

You are hereby notified that the dwelling-house owned by you, situated on East-street in said C., is now destitute of a good secure ladder thereon, reaching from the ground to the ridge-pole, and also of two leathern buckets, which ladder and buckets the law in such case made and provided, adopted by said town, requires you to provide within thirty days. By direction of the firewards of said town.

P. P., *Chairman.*

May 1, 1843.

D. D., *Clerk.*

13. Any tenant, who shall be obliged, by virtue of this act, to pay any money which the lessor ought to have paid, may retain the same out of his rent, or recover the same of the lessor by action. *Ibid.*, sec. 13.

14. The major part of the firewards present at any fire may cause any building or thing whatever to be pulled down, blown up or removed, that they shall judge necessary to stop the progress of such fire, and any fireward may require assistance from any person present at such fire, for that purpose. *Ibid.*, sec. 14.

15. The selectmen on application shall appraise the damage done to any building or thing, by order of the firewards as aforesaid, assess a tax for the payment thereof, and make compensation therefor to the owner, unless it shall appear that the fire began in such building, or that the same must have been burned if it had not been destroyed or removed. *Ibid.*, sec. 15.

16. Upon the refusal of the selectmen, or their neglect for three months after such application, to appraise such damage and assess such tax, the party injured may petition the court of common pleas for redress; and such court, after due notice to the town, shall ascertain such damages, and



render judgment and issue execution therefor, and for costs against the town. *Ibid.*, sec. 16.

17. The firewards shall give written notice to the owner of any building by them deemed to be dangerous by reason of decay, want of repairs or otherwise, to repair or alter the same, which notice shall contain a particular account of the repairs or alterations required to be made. *Ibid.*, sec. 17.

The form of the notice in such case may be :

*To A. B., of C.*

You are hereby notified that the building on Broad-street in said C., owned by you, and now occupied by D. P., is in our opinion dangerous by reason of want of repairs, and that the following repairs are required to be made in order to render the same secure against fire, viz. :

You are therefore required by the firewards of said C., and by virtue of the authority in them vested by law, to cause the said repairs to be made to said building without delay, under the penalty in such case made and provided.

Witness our hands, this first day of May, 1844.

R. M., *Chairman of the Firewards of the town of* —.

C. P., *Clerk of said Firewards.*

18. If the owner do not reside in the town, such notice may be given to the occupant, if any, and if there is no occupant, such notice may be posted up in at least three public places in such town. *Ibid.*, sec. 18.

19. If such repairs or alterations are not made within thirty days after such notice given or posted up, the firewards may cause the same to be made at the expense of the town, and the town may recover the expense thereof of such owner or occupant in an action of debt, to be brought by the firewards in the name of the town. *Ibid.*, sec. 19.

20. The firewards, when in their opinion the public safety may be greatly endangered unless such repairs or alterations are immediately made, may limit a shorter period than thirty days, and notice thereof being given as aforesaid, may, upon neglect of the owner, make such repairs or alterations at the expiration of the time so limited. *Ibid.*, sec. 20.

21. If such building shall, in the opinion of the firewards, be so ruinous as to be not worth repairing, and such repairs are not made within sixty days after such notice, they may demolish the same at the expense of the town, and file with their clerk a particular account of such expense ; and if the

same is not paid within five days from such filing, they may sell at public auction the materials of such building ; and, after deducting the said expense and the cost of the sale, shall pay the proceeds into the town treasury, to be paid over to the owner of the building, upon request. *Ibid.*, sec. 21.

22. The selectmen shall advance to the firewards such sums as may be necessary to carry this act into effect ; and the firewards shall in March, before the annual town meeting, render to the selectmen an exact account of their receipts and expenditures, to be laid before the town, in which all penalties recovered by virtue of this chapter shall be accounted for. *Ibid.*, sec. 22.

23. All penalties incurred by any breach of the provisions of this chapter, or of any regulation prescribed by the firewards, may be recovered by action of debt, to be brought by the firewards in the name of the town. Such penalties shall be applied to the purchase of engines or instruments proper to be used in case of fire, or paid into the treasury of the town. *Ibid.*, sec. 23.

24. This chapter shall be in force only in such town as shall at a legal meeting adopt the same ; but any towns may adopt a part thereof only, and may exempt from the operation of the 11th section such persons as live remote from the compact part thereof. *Ibid.*, sec. 24.

The article in the warrant for town meeting may be :

To see if the town will adopt the provisions of chapter 111 of the Revised Statutes, or any part thereof, and will exempt any persons from the operation of the eleventh section thereof.

The vote of adoption and record thereof may be :

*Voted*, that all the provisions of chapter 111 of the Revised Statutes be adopted by and in force in this town ; [if any exception is made, add—*except sections 17, 18, 19, 20 and 21,*] and that all persons be exempted from the operation of the eleventh section thereof who live more than one mile from the meeting-house.

25. Under the provisions of sections 17, 18, 19, personal notice must be given to all the owners residing within the town, otherwise suit cannot be sustained against any one of the owners for any portion of the expenses incurred. 8 *N. H. R.*, 338, 340. It is incumbent on the firewards to show that

the requirements of the statute have been fully complied with ; if not, they will be trespassers. It must appear that the building exposed the neighboring buildings to the danger of being burned, (which is the meaning of *dangerous* in this chapter.) It is also necessary that written notice should be given personally to every owner or part owner who lives in the town, and that this notice should "contain a particular account of the repairs or alterations required to be made." When the owner or any part owner resides out of town, notice must be given to them by leaving a similar written notice with the person occupying the house, if any ; otherwise by posting up like notices "in at least three public places in the town." *Ibid.*

If the firewards enter a building which is dangerous, they may make such repairs upon it as are necessary to secure it against fire, but no more ; if they make greater repairs the entry is illegal, and no part of the amount expended can be recovered. The extent of their authority is to make such repairs as shall be sufficient to protect the neighboring buildings from unnecessary exposure to risk of fire, or to ensure the same end by the destruction of buildings not worth repairing. *Ibid.*

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## CHAPTER 50.

### OF POLICE REGULATIONS.

- |                                     |                                  |
|-------------------------------------|----------------------------------|
| 1. Offences in the street.          | 11. Buying property of pauper.   |
| 2. Obscene words, songs or figures. | 12. Resisting police officer.    |
| 3. Injuries to property.            | 13. Riding fast in the street.   |
| 4. Gaming or juggling unlawful.     | 14. Careless driving of teams.   |
| 5. Making noises in street.         | 15. Punishment of offenders.     |
| 6. Bathing in exposed places.       | 16. Complaints for offences.     |
| 7. Leaving encumbrance in street.   | 17. Proceedings on complaint.    |
| 8. Injuries to the street.          | 18. If offender does not appear. |
| 9. Drunkards and prostitutes.       | 19. Appeal, when allowed.        |
| 10. Giving liquor to idlers, &c.    | 20. Parent or guardian liable.   |
|                                     | 21. Fines, to whom paid.         |
|                                     | 22. Law in force every where.    |

1. No person shall make any brawls or tumults in any

street, lane, or alley or other public place, or be guilty of any rude, indecent or disorderly conduct, or shall insult or wantonly impede any person passing therein, or shall throw any stones, bricks, snowballs or dirt, or play at ball, or at any game at which ball is used. *R. S., ch. 113, sec. 1.*

2. No person shall sing or repeat, or cause to be sung or repeated any lewd, obscene or profane song, or shall repeat any lewd, obscene or profane words, or write or mark in any manner any obscene or profane word, or obscene or lascivious figure or representation on any building, fence, wall, post or other thing whatever. *Ibid., sec. 2.*

3. No person shall wantonly injure or deface any building, fence, wall, post, sign-board or sign; or shall wantonly cut or injure any tree standing in any street, highway or public place; or shall rob any garden or field of fruit or vegetables; or shall wantonly injure any trees, shrubs or bushes growing in any garden, field or yard; or shall without lawful permission climb on or over any fence of any garden or yard. *Ibid., sec. 3.*

4. No person shall use any juggling or unlawful games or plays, or play at any game whatever for money or other property. *Ibid., sec. 4.*

5. No person shall, within the compact part of any town, fire or discharge any cannon, gun, pistol or other fire-arms, or beat any drum, (except by the command of a military officer having authority therefor,) or fire or discharge any rockets, squibs, crackers, or any preparation of gunpowder, (except by permission of a majority of the police officers or selectmen in writing,) or shall make any bonfire, or improperly use or expose any friction matches, or knowingly raise or repeat any false cry of fire. *Ibid., sec. 5.*

6. No person shall, within the view of any dwelling-house or of any public road, street or wharf in the day time bathe or swim without necessity, or expose his person indecently in dressing or undressing, for the purpose of swimming or bathing, or otherwise, without necessity. *Ibid., sec. 6.*

7. No person shall, without necessity, place or leave, or cause to be placed or left in any street, lane, alley or public place, for two hours by day or one hour by night, any sled, wheel-barrow, cart, dray, chaise or other carriage, or any box, crate, cask, tub or other vessel, or place or throw, or cause to be placed or thrown into any such street, lane, alley or public place any wood, lumber, manure, dirt, or other matter that



may impede the free passage of the same, and suffer the same to remain there two hours. *Ibid.*, sec. 7.

8. No person shall, without necessity, drive any wheel carriage, sled or wheel-barrow on or over the side pavements or walks of any street, lane or alley, or ride or lead any horse thereon. *Ibid.*, sec. 8.

9. If any person shall be found drunk in any street, alley or other public place, or shall be a common street-walker or prostitute, such person shall be punished therefor. *Sec. 9.*

10. No person shall sell, give or otherwise furnish to any pauper, or person committed to any house of correction, any spirituous liquor whatever, except by permission of the keeper thereof, or to any spendthrift or idle person under guardianship, except by permission of his guardian. *Ibid.*, sec. 10.

11. No person shall purchase or receive in exchange or otherwise, from any pauper supported in any alms-house or poor-house, without permission of the overseers of the poor, any property whatever; and any person so offending shall be punished under the provisions of this chapter, and shall pay treble the value of such property to said overseers. *Ibid.*, sec. 11.

12. If any person shall rescue or attempt to rescue any prisoner in the custody of any police officer, or shall wilfully and knowingly resist any police officer in the execution of his office, he shall be deemed guilty of a violation of this chapter. *Ibid.*, sec. 12.

13. If any person shall ride through any street or lane in the compact part of any town on a gallop, or at any swifter pace than at the rate of five miles an hour, he shall be deemed guilty of a violation of this chapter. *Ibid.*, sec. 13.

14. If any person, having the charge of any cart, dray, sled or other carriage, drawn by horses or oxen, shall suffer the same to pass through any street in the compact part of any town, without keeping with and carefully attending the same, and keeping such horses or oxen under his command, he shall be deemed guilty of a violation of this chapter. *Ibid.*, sec. 14.

15. Any person convicted of any offence in this chapter mentioned, shall be punished by fine not exceeding ten dollars nor less than one dollar, and shall pay costs of prosecution, and stand committed until the same be paid, or by imprisonment for a term not less than five days nor more than



thirty days, in the common jail or in the bridewell of such town, or by confinement to hard labor the like term in the house of correction, at the discretion of the justice or of the court before whom such conviction shall be had. *Ibid.*, sec. 15.

To have a legal bridewell it should be established as such by a vote of the town, and a keeper of it appointed, whose duty it shall be to take care of the prisoners confined therein. The house of correction is not a bridewell, but may be voted to be such by the town.

For the form of complaints and directions in the proceedings thereon see chapter 58: "General provisions relative to this Title."

16. No trial shall be had for any offence in this chapter mentioned, but upon complaint on oath. If the name of the offender is not known it shall be sufficient to insert in such complaint, and in the other proceedings, any description by which he may be known. *Ibid.*, sec. 16.

17. If the person charged with any offence shall not be in custody, the justice to whom the complaint shall be made shall issue a warrant in due form of law for his arrest, or a summons requiring him to appear at a certain time and place, which shall be served by delivering to him an attested copy of such summons. *Ibid.*, sec. 17.

For the proceedings in such case, see chapter 58 of this Title.

18. If any person so summoned shall not appear as required by such summons, the justice may hear the evidence, and acquit or convict such person, in the same manner as if he were present. *Ibid.*, sec. 18.

19. Any person convicted of any offence mentioned in this chapter may appeal to the court of common pleas for the county, within two hours after, upon giving bond with sufficient sureties to the town to prosecute said appeal with effect, and to pay costs if he shall not be discharged at said court. *Ibid.*, sec. 19.

20. If any person so convicted shall be a minor under the age of fourteen years, his parent, guardian or master shall be liable to pay the fine and costs imposed, provided he shall have received due notice of the time and place of trial of such minor for said offence, and an action of debt may be maintained by the police officers in the name of the town therefor. *Ibid.*, sec. 20.

21. All fines and costs adjudged under this chapter shall be paid to the justice who imposed the same, and such fines shall be paid by him to the town, and the costs to the several persons entitled thereto. *Ibid.*, sec. 21.

22. All the provisions of this chapter are now in force in every town in the state, whether adopted by the town or not. The clause which limited its operation to those towns which should adopt it, is repealed by the Revised Statutes.

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## CHAPTER 51.

### OF HOUSES OF CORRECTION, AND THE PUNISHMENT OF IDLE AND DISORDERLY PERSONS.

- |                                   |                                |
|-----------------------------------|--------------------------------|
| 1. Houses of correction provided. | 4. Complaint and trial.        |
| 2. Regulations for, how made.     | 5. Appeal, how allowed.        |
| 3. Idle and disorderly persons.   | 6. Offences in the night time. |
|                                   | 7. County house or jail used.  |

1. The court of common pleas for any county, or the inhabitants of any town at any legal meeting, may provide such lands, buildings and articles of any kind as may be necessary for a house of correction for such town or county, and may appoint suitable officers for the management thereof, and make all necessary by-laws and regulations for the government of the inmates, and cause the same to be enforced; but in no case shall the punishment inflicted exceed hard labor and such reasonable correction as a parent may lawfully inflict upon a refractory child, or solitary imprisonment not exceeding forty-eight hours at one time. *R.S.*, ch. 116, sec. 1.

2. A vote of the town establishing the house of correction as such, is necessary. The selectmen have no authority to act in the matter except by express authority. If the town appoint them agents to erect buildings and prepare by-laws, their proceedings should be ratified by the town, and the vote and by-laws be entered on the town records.

In some cases a building connected with the poor farm is established as the house of correction, and the overseer of the poor farm appointed keeper ; but such overseer, unless expressly appointed, has no authority to act as keeper. The keeper is to be appointed by the town, and any vacancy filled like a vacancy in other town offices.

An article in relation to the matter should be inserted in the warrant for town meeting. The form of the vote may be :

*Voted*, that the dwelling-house on the town farm be established as the house of correction for this town.

*Voted*, that the overseer of the town farm for the time being be the keeper of the house of correction, and have all the powers of such office until otherwise ordered.

*Voted*, that the following by-laws and regulations be adopted for the government of the inmates of the house of correction, and the keeper thereof see that they are enforced, viz. :

I. Every inmate of the house of correction, when able to labor, shall be kept diligently employed under the direction of the keeper.

II. If any inmate shall refuse to obey, &c.

3. All rogues, vagabonds, lewd, idle or disorderly persons, any person going about begging, any person using any subtle craft, juggling, or unlawful game or play, any person pretending to have knowledge in physiognomy or palmistry, any person pretending for money to tell destinies or fortunes, or discover by any spell or secret art where lost or stolen goods may be found ; any common piper, fiddler, runaway, stubborn servant or child, common drunkard, night-walker, pilferer, or person wanton and lascivious in speech or behavior ; any common railer or brawler, and any person who neglects his employment, mis-spends his earnings, and does not provide properly for the support of himself and family, may be sent to the house of correction in the town or county in which such offence is committed, and for want of such house of correction the common jail of the county may be used for that purpose. *Ibid.*, sec. 2.

4. In any such case, complaint in writing, under oath, shall be made to some justice of the peace, who may thereupon issue a warrant under his hand and seal, and cause the offender to be brought before him ; and if upon examination the complaint shall be sustained, said justice may

sentence the offender to confinement and hard labor in the house of correction in such town or county for a term not exceeding six months. *Ibid.*, sec. 3.

For the mode of proceeding, see *ch.* 58, of this Title.

5. Any person convicted and sentenced as aforesaid may appeal to the next court of common pleas for the county, by recognizing with sufficient surety or sureties, before the justice, in such reasonable sum as he may order, conditioned that the appellant shall enter and prosecute the appeal with effect, and abide the order of the court thereon, and in the mean time keep the peace and be of good behavior toward all the citizens of the state; and a commission of the like offence by the appellant before a decision is had on such appeal shall be deemed to be a breach of the condition of the recognizance. *Ibid.*, sec. 4.

6. If any person shall be found committing either of said offences in any public street or road in the night time, he may be apprehended by any magistrate, constable or watchman, or by any person by order of such officer, and kept in custody in some convenient place, not exceeding twenty-four hours, during which time he shall be carried before some justice of the peace, there to be prosecuted or discharged according to law. *Ibid.*, sec. 5.

A complaint in writing on oath should be made as soon as may be; without a complaint made within the twenty-four hours the prisoner must be discharged.

7. When there is no house of correction in any town, the county house of correction may be used instead thereof; if there be neither, then the common jail of the county shall be used as such house of correction. *R. S.*, *ch.* 226, sec. 11.

In this case the court of common pleas should make an order, making the jail the county house of correction, and appoint the jailer to be keeper thereof. 12 *Mass. R.*, 356.

## CHAPTER 52.

## OF POLICE OFFICERS, CONSTABLES AND WATCHMEN.

- |                                 |                                |
|---------------------------------|--------------------------------|
| 1. Police officers, how chosen. | 9. Fines, how remitted.        |
| 2. Vacancies, how filled.       | 10. Police act, when in force. |
| 3. Powers and fees.             | 11. Watchmen appointed.        |
| 4. To arrest offenders on view. | 12. Powers of watchmen.        |
| 5. On arrest in night time.     | 13. Power in night time.       |
| 6. Confinement of prisoner.     | 14. Offenders to be detained.  |
| 7. Regulation for streets.      | 15. Powers of constables.      |
| 8. To be approved by town.      |                                |

1. Police officers, not exceeding seven in number, shall be appointed by the selectmen of each town in which this chapter may be in force, by writing under their hands, and shall be qualified by taking the oath of office, and causing the said appointment and the certificate of such oath written thereon, to be recorded by the town-clerk; and may be removed at the pleasure of the selectmen. *R. S., ch. 114, sec. 1.*

2. It shall be duty of the selectmen to make the said appointments in the month of March; but if a vacancy shall occur from any cause, or if such appointment shall not have been made in March, the selectmen may appoint at any time afterwards. *Ibid., sec. 2.*

3. Police officers shall hold their office until the last day of the next March, and shall be, by virtue of said appointment, constables and conservators of the peace, and shall receive such compensation as shall be voted by the town, and the same fees as constables. *Ibid., sec. 3.*

To resist a police officer, or rescue a prisoner from him, is an offence against the police of towns. See *ch. 50, sec. 12 and 15.* In aggravated cases, however, the offence may be punished by fine and imprisonment in the common jail, or by confinement to hard labor in the state prison, according to the character of the offence with which the person is charged. *R. S., ch. 217.*

4. Any police officer, upon view of any offence committed against the provisions of this chapter, may arrest the offender and forthwith carry him before a justice of the peace, to answer a complaint therefor, and the oath of such



police officer shall be sufficient evidence of such offence, unless invalidated by other evidence. *Ibid.*, sec. 4.

This does not dispense, however, with the necessity of making a complaint in writing as soon as may be.

5. If any police officer shall arrest any such offender between sunset and sunrise, or shall arrest any person for being found drunk contrary to the provisions of this chapter, he may commit such person to the common jail, or the bridewell or house of correction, or otherwise retain him in safe custody, not exceeding twenty-four hours, within which time he shall be discharged or taken before a justice of the peace, to answer for the offence. *Ibid.*, sec. 5.

For the meaning of "bridewell," see chapter 50, sec. 15.

6. The keeper of such jail, bridewell or house of correction, shall, upon the verbal request of any police officer, receive and detain in custody every person so arrested and presented by him, not exceeding twenty-four hours, unless sooner called for by the same or some other police officer. *Ibid.*, sec. 6.

During this time a complaint in writing on oath should be made before some justice, on which he should be arrested for examination.

7. The police officers of any town may make such regulations as they may deem expedient for the stands of hacks, drays and carts in any street, lane or alley; and for the height and position of any awning, shade or fixture in front of or near any building; and respecting any obstruction in any street, lane or alley, the smoking of any cigar or pipe therein, or in any stable or other out buildings; and every violation of such regulations may be proceeded against and punished in the same manner as other offences mentioned in the preceding chapter. *Ibid.*, sec. 7.

The form of such regulations may be similar to those of firewards in chapter 49.

8. No regulation made by such police officers shall take effect until the same shall be approved by the selectmen of the town, and recorded with such approbation by the town-clerk, and published a reasonable time in one or more newspapers printed in the town. *Ibid.*, sec. 8.

The approval of the selectmen may be written under the regulations, as follows :

We hereby approve of the above police regulations established by the police officers of this town.

A. B. } *Selectmen*  
 C. D. } *of*  
 E. F. } *N—.*

9. The selectmen may remit fines imposed for violations of this chapter and costs, and discharge offenders from imprisonment, and the town shall be liable for the prison charges in case of the offender's inability. *Ibid.*, sec. 9.

10. This chapter shall be in force in all towns which have at any legal meeting adopted the provisions thereof, and in all towns in which any of the provisions of an act entitled "*An act to establish a system of police for the town of Portsmouth, and for other purposes,*" passed June 23, 1823, are in force. *Ibid.*, sec. 10.

11. The selectmen of any town, being authorized by vote of the town, may appoint watchmen for performing a walking night watch, and fix their stations and limits, prescribe their duties, and contract for and pay them a reasonable compensation for their services. *R. S.*, ch. 115, sec. 1.

12. They shall be appointed and qualified in the same manner, and shall have, while on duty, the same powers as police officers. *Ibid.*, sec. 2. See sections 1 and 15.

13. Every watchman may arrest any person whom he shall find committing any kind of disorder or disturbance, or any crime, or any offence against the police of towns, or such as are strolling about the streets at unseasonable hours, who refuse to give an account, or may reasonably be suspected of giving a false account of their business or design, or who can give no account of the occasion of their being abroad. *Ibid.*, sec. 3.

14. Every person so arrested may be committed, detained and proceeded against in the manner provided by the chapter relating to the police of towns, in the case of offences prohibited thereby. *Ibid.*, sec. 4.

15. Any constable, to whom any writ or other legal precept may be directed by a justice of the peace, is empowered and required to serve and return the same according to law, and is vested with the same powers and subject to the same liabilities in relation thereto as sheriffs are in like cases. *R. S.*, ch. 179.

# 16. The form of an appointment may be :

By virtue of the authority in us vested by law, we, the subscribers, selectmen of the town of N., hereby appoint A. B., C. D. and E. F. to be police officers of said town for the year ensuing ; and upon taking the oath of office therefor, and causing this appointment and the certificate of such oath written thereon to be recorded by the town-clerk, they are to possess all the powers appertaining to the office of a police officer.

Given under our hands, this twentieth day of March, 1843

N. L. } *Selectmen*  
M. N. } *of*  
S. P. } *N\_\_\_\_\_.*

The oath of office is the one required to be taken by all town officers. The form of the certificate may be :

H ss., *March 20, 1843.* Then appearing the said A. B., C. D. and E. F., severally made oath that they would faithfully and impartially discharge and perform all the duties incumbent upon them respectively, as police officers of the town of N., according to the best of their abilities, agreeably to the rules and regulations of the constitution and laws of this state. Before me,

A. R. S., *Justice of the Peace.*

This certificate is to be written on the appointment itself, and the whole recorded by the town-clerk, and attested—

A true copy. Attest : F. M., *Town-Clerk.*

The form of a removal of a police officer may be :

*To A. B., of C., one of the Police Officers of said town.*

Whereas the public good requires that you should no longer hold or serve in the office of a police officer of this town, you are hereby removed therefrom, and will cease hereafter to perform any act or duty therein.

Given under our hands, at N., this first day of July, 1843.

N. L. } *Selectmen*  
M. N. } *of*  
S. P. } *N\_\_\_\_\_.*

This should be served on the person removed, by giving to him the original and keeping a certified copy, on which the return of service should be made. The whole should then be recorded by the town-clerk. No person can act

legally as a police officer until his appointment is recorded, nor after service of notice of removal.

17. The sale of the office of constable to the highest bidder is contrary to sound policy—2 *N. H. R.*, 517; and the choice in such case would probably, as in the case of collectors of taxes, be illegal and void. 7 *N. H. R.*, 131.

## CHAPTER 53.

### OF LICENSED TAVERNERS AND RETAILERS.

- |                                      |  |
|--------------------------------------|--|
| 1. Taverners to be licensed.         | 8. Justice may bind over offender.                       |
| 2. Taverners, how furnished.         | 9. Form of taverner's license.                           |
| 3. Taverners not to suffer tippling. | 10. Form of retailer's license.                          |
| 4. Taverner's license, how revoked.  | 11. Complaint against taverner, to have license revoked. |
| 5. Retailers may be licensed.        | 12. Form of revocation.                                  |
| 6. Selling spirit, penalty for.      | 13. Effect of taverner's license.                        |
| 7. Fee for recording license.        | 14. Unlicensed tavern illegal.                           |

1. The selectmen on application may license any suitable person, of good moral character, to exercise the business of a taverner in such town. Such license shall designate the house where such tavern shall be kept, and being first recorded by the town-clerk shall be in force as to such house, and no other, for one year only; but such license shall not authorize the sale of wine and spirituous liquors, unless expressly authorized therein. *R. S.*, ch. 117, sec. 1.

2. Every licensed taverner shall at all times be furnished, at the house designated in his license, with suitable provisions and accommodations for travellers, their cattle and horses; and if any person so licensed shall not be so furnished, he shall forfeit the sum of five dollars, to be recovered by any person suing for the same. *Ibid.*, sec. 2.

3. If any licensed taverner shall permit any riotous, disorderly or irregular conduct in or about his house or buildings, or permit any person upon the Lord's day to remain drinking intoxicating liquors therein, or at any other time



permit any person to remain therein drinking to excess, or permit any person to play at cards, dice or billiards, or at any bowling alley, or at any game in or about his house, yards or buildings, he shall be punished by fine not exceeding twenty dollars. *Ibid.*, sec. 3.

4. If any licensed taverner shall be destitute of any of the provisions or accommodations aforesaid, or shall permit in or about his house any conduct forbidden by this chapter, the selectmen on complaint shall notify the parties interested, and hear and examine all evidence in relation to the same; and if they shall see cause shall forthwith revoke such taverner's license; and the said revocation being recorded by the town-clerk, and notice thereof given to said taverner, such license shall be void. *Ibid.*, sec. 4.

5. The selectmen on application may license any retailer to sell wine and spirituous liquors in any quantity not less than one pint, to be sold, delivered and carried away. Such license shall designate the place of sale, and shall be recorded, and in force in the same manner and for the same time as a taverner's license. *Ibid.*, sec. 5.

6. If any person, not being a licensed taverner or retailer, shall sell any spirituous liquor, or wine mixed or otherwise, in any quantity, or if any retailer shall sell any spirituous liquors or wine to be drank in his store or buildings, he shall on conviction be punished by fine not exceeding fifty dollars, nor less than twenty dollars. *Ibid.*, sec. 6.

7. The town-clerk shall be entitled to a fee of twenty cents for recording each taverner's or retailer's license. *Ibid.*, sec. 7.

8. Every justice of the peace, upon complaint of any violation of the sixth section of this chapter, shall issue his warrant for the arrest of the person complained against; and if upon examination he shall be of opinion that he is guilty, he shall order such offender to recognize in a sum not less than fifty dollars nor more than a hundred dollars, to appear at the next court of common pleas for such county, and abide the order of said court, and stand committed till such order is complied with. *Ibid.*, sec. 8.

9. The form of a taverner's license, under sec. 1, may be:

The subscribers, selectmen of the town of N., do hereby license and authorize A. L., being a person of good moral



character, to exercise the business of a taverner in said town, in the house by him now occupied, and no other, for the term of one year from this date.

Given under our hands at N., this first day of April, 1843.

L. B. } *Selectmen*  
M. L. } *of*  
S. M. } *N—.*

10. The form of a retailer's license, under sec. 5, may be :

We, the subscribers, selectmen of the town of N., hereby license and authorize A. B., of said N., to sell wine and spirituous liquors in the store now occupied by him, in any quantity not less than one pint, to be sold, delivered and carried away therefrom, for the term of one year from this date.

Given under our hands, this first day of April, 1843.

N. L., &c., *Selectmen of N.*

11. The form of a complaint against a taverner, to procure the revocation of his license, may be :

*To the Selectmen of the Town of N., in the County of H.*

Respectfully complain the subscribers, citizens of said town, that A. L., of said N., a licensed taverner therein, not regarding his duty as such licensed taverner, nor the law in such case made and provided, on the tenth day of May instant, being the Lord's day, did permit C. D. and L. B. to remain in the house wherein he was and is licensed to exercise the business of a taverner in said N., drinking intoxicating liquors therein, and on divers other Lord's days has been guilty of a like offence, all which is injurious to the morals and well being of the community and against the peace and dignity of the state. Wherefore we pray you to cause the said A. L. to be notified thereof, and a hearing thereon to be had, and that the license of the said A. L. may be revoked, and he dealt with further according to law.

D. B.

B. W.

On this complaint the selectmen should appoint a day of hearing, notify the taverner and the complainants thereof, and proceed to an examination of the case.

12. The form of a revocation of a license may be :

*To A. L., of N.*

Whereas complaint has been made to us, the subscribers, selectmen of said town, that you, being a licensed taverner in said town, have permitted persons to remain in your house on the Lord's day, drinking intoxicating liquors therein, contrary to law and to your duty as a licensed taverner ; and whereas we have appointed a day of hearing thereon, and caused you to be duly notified of said complaint and of said day of hearing, and have heard and examined all the evidence in relation thereto ; and whereas we are satisfied that said complaint is true, we hereby revoke the license which was heretofore granted to you, and declare the same to be of no force.

Given under our hands at N., this first day of June, 1843.

N. L.	} <i>Selectmen</i>
A. S.	
G. P.	
	<i>of</i>
	<i>N——.</i>

13. "Selectmen may grant license to keep tavern for any term less than one year ; even for a single day." 2 *N. H. R.* 501 ; but this authority should be exercised with caution and only for the public good. If granted except in case of strong reasons of public convenience, it would be a gross abuse of power.

"Selectmen have no authority to license a shop-keeper to keep tavern in his shop. It is said that selectmen are sometimes so forgetful of their duty as to license store-keepers to keep tavern, who have in fact no intention to open a tavern, but wish merely to avail themselves of the license to sell wine, mixed liquors and spirits in less quantity than a pint in their stores. But it ought to be generally understood that such licenses are shameful attempts to evade the law ; are alike disgraceful to those who give and those who receive them ; are utterly void for such purpose, and will afford no protection from the penalties of the statute to those who sell."

"A license to keep tavern in a particular house, is not a license to sell liquor from benches erected any where in the neighborhood of the house licensed. The objects of the statute were—in the first place, to prevent improper persons from opening taverns ; and in the next place to prevent

taverns from becoming disorderly, and nuisances to the public, by placing them under the inspection of the selectmen. A license to keep a tavern necessarily implies the right to use all proper buildings for that purpose; but inn-keepers, by virtue of a license to keep tavern, have no right to sell forbidden liquors at other places than the house licensed, and its appendages. A bench standing near the house, and an agent employed there in retailing liquor, cannot in law be considered a tavern in itself, or any appendage to a tavern." Such a license was held void. *Ibid.*

"It is an indictable offence, under the statute, to exercise the business of a taverner without a license." 5 N. H. R., 257.

14. "Every person who sells spirits by retail without a license is liable to the penalty in the statute, whether such person sells on his own account or as the agent of another." 2 N. H. R., 505.

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## CHAPTER 54.

### OF SUNDAY AND RELIGIOUS MEETINGS.

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|----------------------------------|----------------------------------|
| 1. Labor on Sunday forbidden.    | 7. Penalty for offence.          |
| 2. Disturbance in meetinghouse.  | 8. Offender to recognize.        |
| 3. Penalty for such offences.    | 9. Religious meetings protected. |
| 4. Power and duty of officers.   | 10. Penalty for offence.         |
| 5. Who are liable for penalty.   | 11. Disturbance at, penalty.     |
| 6. Disturber of meeting removed. | 12. Offender apprehended.        |
|                                  | 13. Prosecution limited.         |

1. No person shall do any work, business or labor of his secular calling, to the disturbance of others, works of necessity and mercy excepted, on the first day of the week, commonly called the Lord's day; nor shall any person use any play, game or recreation on that day, or any part thereof. *R. S., ch. 118, sec. 1.*

2. No person shall on the Lord's day, within the walls of

any house of public worship, or near the same, behave rudely or indecently, either in the time of public service or between the forenoon and afternoon services. *Ibid.*, sec. 2.

3. Any person offending against any provision of the foregoing sections of this chapter, shall forfeit a sum not exceeding six dollars nor less than one dollar, which shall be recovered by any selectman or police officer, for the use of the town. *Ibid.*, sec. 3.

4. Any selectman or police officer shall have power to remove any person behaving rudely or indecently in any meeting for public worship from the place of such meeting, and him detain until the close of such meeting; and the same right to command assistance as sheriffs have, and may prosecute for all violations of the preceding sections of this chapter. *Ibid.*, sec. 4.

5. Parents, masters or guardians shall be liable respectively for all forfeitures incurred by the children, wards or servants under their care; and a warrant of distress or execution may be issued therefor. *Ibid.*, sec. 5.

6. If any person shall disturb any religious meeting, by speaking in the same so as to interrupt or prevent the stated and orderly proceedings and exercises of such meeting, or shall make any disturbance while the people are assembling at or leaving their place of worship, and shall not desist therefrom when requested, he may be removed from such meeting or place of worship by any individual. *Ibid.*, sec. 6.

7. Any person so offending shall be fined not less than one dollar nor more than ten dollars, and may be required to recognize with sufficient sureties in a sum not less than fifty dollars, to appear at the court of common pleas next to be holden in said county, and to abide the order of said court, and in the mean time to be of good behavior. *Ibid.*, sec. 7.

8. If such recognizance is forfeited said court may require such offender to recognize with sufficient sureties in a sum not exceeding two hundred dollars, to appear at the next term of said court, and to abide the order thereof; and in the mean time to be of good behavior, and so from term to term, as may be ordered by said court, so long as such forfeiture shall be incurred. *Ibid.*, sec. 8.

9. No person shall keep any shop, tent, booth, wagon or carriage for the sale of, or shall sell, give or expose to sale, any spirituous or intoxicating liquors, goods or merchandize of

any kind, within two miles of any public assembly convened for the purpose of religious worship ; but this shall not be construed to prevent any person from selling merchandize at the shop or store where he usually transacts business, nor from selling any liquors in any place where he shall have received a license therefor before the appointment of such religious meeting, nor to prevent any pedlar from selling his goods to any person at the usual place of business or residence of such person. *Ibid.*, sec. 9.

10. If any person shall be guilty of a breach of the preceding section, upon conviction thereof before any justice of the peace he shall be fined not exceeding ten dollars, or committed to the house of correction not exceeding thirty days, or may be sentenced both said punishments. *Ibid.*, sec. 10.

11. If any person shall be guilty of noisy, rude or indecent behavior, of exhibiting shows or plays, or promoting or engaging in horse racing or gambling at or near any such religious meeting, so as to interrupt or disturb the same, upon conviction thereof before any justice of the peace he shall be fined not exceeding ten dollars ; or, if the offence be of an aggravated nature, he may be held to recognize with sufficient sureties, to appear at the court of common pleas next to be holden in the same county ; and upon conviction before such court he shall be fined not exceeding fifty dollars or imprisoned in the common jail not exceeding ninety days. *Ibid.*, sec. 11.

12. Any person, upon view of any offence described in this chapter, may apprehend such offender and bring him before some justice of the peace, who upon complaint under oath shall issue his warrant, cause such offender to be arrested, and proceed to a hearing of such complaint. *Ibid.*, sec. 12.

13. No prosecution for any violation of the provisions of this chapter shall be sustained, unless commenced within thirty days after the commission of such offence. *Ibid.*, sec. 13.



## CHAPTER 55.

## OF THE SAFE KEEPING OF GUN-POWDER.

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|------------------------------------|--------------------------------------|
| 1. Search for gun-powder made.     | 6. Powder in such case forfeited.    |
| 2. Penalty for keeping illegally.  | 7. Not to be carried about for sale. |
| 3. Retailing of powder regulated.  | 8. Keeper of magazine, duties.       |
| 4. How transported in villages.    | 9. Master of vessel, duties.         |
| 5. Not allowed to stand in street. | 10. Penalties, how recovered.        |

1. Any two police officers, firewards or selectmen, may search any building in the compact part of any town, and any vessel lying in any port in this state, in which they have cause to suspect that gun-powder, in a greater quantity than twenty-five pounds, may be kept or stored; and in case a greater quantity shall be found, the said police officers, firewards or selectmen shall seize the same as forfeited. *R. S., ch. 112, sec. 1.*

For the proceedings in case of forfeiture, see the Revised Statutes, *ch. 212.*

2. Any person who shall keep or knowingly suffer any quantity of gun-powder, greater than twenty-five pounds, to be kept or stored in any such building or vessel, or aid or assist in keeping or storing the same, or shall know that the same is so stored or kept, and shall not forthwith inform one of the police officers, firewards or selectmen thereof, shall forfeit a sum not more than five dollars nor less than one dollar, for every day the same shall be so kept or stored. *Ibid., sec. 2.*

When a sum of money is forfeited it must be sued for as in section 10.

3. Gun-powder kept for retail in quantities less than twenty-five pounds, shall at all times be kept in a cannister of tin or other metal, securely covered from fire; or if the same is kept in a cask, or wooden or combustible vessel, the said cask or vessel shall be enveloped in a close leathern bag; and if any person shall keep any gun-powder for retail in any other manner than as aforesaid, he shall forfeit a sum not more than five dollars nor less than one dollar, for every day the same shall be so kept. *Ibid., sec. 3.*

4. No gun-powder shall be transported through the com-

pact part of any town or village in greater quantity than one hundred pounds, nor unless the casks containing the same be enveloped in close leathern bags, unless it shall be conveyed in a closely covered carriage; and if any person shall transport any greater quantity of gun-powder, or in any other manner than is herein before expressed, he shall forfeit a sum not exceeding fifty dollars nor less than fifteen dollars. *Ibid.*, sec. 4.

5. No carriage, upon which there shall be a greater quantity than twenty-five pounds of gun-powder, shall be permitted to stand in any building, or near any dwelling-house, store or other building, in the compact part of any town; and any person who shall stop, place or leave any such carriage as aforesaid, shall forfeit a sum not exceeding fifty dollars nor less than fifteen dollars. *Ibid.*, sec. 5.

6. In case any gun-powder shall be found upon any carriage contrary to the provisions of this chapter, any police officer, fireward or selectman may seize the same as forfeited. *Ibid.*, sec. 6.

For the mode of proceeding with forfeited property, see Revised Statutes, chapter 212.

7. If any person shall carry from town to town, or from place to place, any gun-powder for the purpose of peddling, or selling it by retail, in quantities less than twenty-five pounds, or shall sell or offer to sell by retail any gun-powder in any highway or street, or on any wharf, parade or common, or if any person shall sell or deal out any gun-powder in the night time, between sunset and sunrise, he shall forfeit for each offence a sum not more than five dollars nor less than one dollar. *Ibid.*, sec. 7.

8. When any magazine for gun-powder shall be provided by any town for public use, a keeper of such magazine shall be annually chosen, who shall receive into and deliver out of said magazine, all gun-powder brought or deposited there, and account for the same; and he shall receive for his services at the rate of twenty cents for a hundred pounds for all quantities above ten pounds, and for less quantities one cent a pound. *Ibid.*, sec. 8.

9. The master of any merchant ship or vessel bringing gun-powder into Portsmouth in quantity greater than twenty-five pounds, shall deposit in the public magazine all gun-powder so brought by him, within forty-eight hours;

and if he shall neglect so to deposit the same he shall forfeit the sum of one hundred and fifty dollars. *Ibid.*, sec. 9.

10. All penalties and forfeitures incurred by any violation of this chapter shall be sued for and recovered by action of debt, to be brought by the police officers, firewards or selectmen, in the name of the town, and shall be expended in the purchase of such articles as are proper to use in the extinguishment of fires. *Ibid.*, sec. 10.

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## CHAPTER 56.

### OF NUISANCES AND CONTAGIOUS DISEASES.

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|--------------------------------------|--------------------------------------|
| 1. Regulations by health officers.   | 10. Nuisance in street removed.      |
| 2. Search warrant for nuisance.      | 11. Compensation of health officers. |
| 3. Nuisances, how removed.           | 12. Vaccinating agent chosen.        |
| 4. Assistants may be employed.       | 13. Infected persons removed.        |
| 5. Removal without notice.           | 14. Inoculation prohibited.          |
| 6. Expense paid by owners.           | 15. Pest houses, how licensed.       |
| 7. Leaving offensive matter.         | 16. Persons in pest houses, duty.    |
| 8. Slaughter houses, &c., regulated. | 17. Inoculation permitted, when.     |
| 9. Privies and styres regulated.     |                                      |

1. The health officers may make regulations for the prevention and removal of nuisances, and such other regulations relating to the public health as in their judgment the health and safety of the people may require, which shall take effect when they shall be approved by the selectmen, recorded with such approbation by the town-clerk, and published in some newspaper printed in the town, or copies thereof posted in two or more public places in the town. And any person wilfully violating such regulations shall incur a penalty of ten dollars, to be recovered by the health officers in the name of the town. *R. S.*, ch. 119, sec. 1.

The form of such regulations may be similar to those established by firewards.

2. Health officers, and each of them, shall enquire into all nuisances and other causes of danger to the public health; and whenever they shall know, or have cause to suspect, that any nuisance or other thing injurious to the public health is in any building, vessel or enclosure, they shall make complaint under oath to some justice of the peace, who shall issue a warrant directed to them, to search such building, vessel or enclosure; and they may, by virtue thereof, in the day time forcibly enter therein and make such search. *Ibid.*, sec. 2.

The form of the complaint and warrant in such case may be :

*To A. B., Esquire, one of the Justices of the Peace in and for the County of Rockingham.*

Complains C. D., of N., in said county, one of the health officers of said town, and gives said justice to understand that he has cause to suspect that there is a nuisance in or under the stable of D. P., on Broad-street, in said town; and that said nuisance may be injurious to the public health: wherefore the said C. D. prays that a warrant may issue authorizing him to search said building, according to the statute in such cases made and provided. C. D.

ROCKINGHAM SS., *July 1, 1843.* Then the said C. D. made oath that the foregoing complaint by him signed is in his belief true. Before me,

*B. B., Justice of the Peace.*

STATE OF NEW-HAMPSHIRE.

ROCKINGHAM SS. *To C. D., one of the Health Officers of the town of N., in said County.*



Whereas C. D., of N., one of the health officers of said N., has exhibited to me, B. B., one of the justices of the peace in and for said county, his aforesaid complaint on oath: We therefore authorize and require you, with necessary and proper assistance, to enter in the day time into said stable of D. P., in said town, and there make search for said nuisance, and to proceed therewith according to the statute in such case made and provided.

Herein fail not. Given under my hand and seal, this first day of July, in the year eighteen hundred forty-three.

*B. B., Justice of the Peace.*

3. The health officers may give written notice to the

owner or occupier of any building, vessel or enclosure, to remove or destroy any nuisance or other thing deemed by them, on examination, to be injurious to the public health, within a certain time limited therein; and in case such owner or occupier, the said notice having been given to him or left at his usual place of abode, shall neglect to comply therewith, the said health officers may forcibly enter such building, vessel or enclosure, and cause the said nuisance, or other thing aforesaid, to be removed or destroyed. *Ibid.*, sec. 3.

The form of such notice may be :

*To A. B., of C.*

Whereas a large quantity of offal and animal matter, by you collected in the hog yard under your barn in said C. is deemed by us on examination to be injurious to the public health, you are hereby required and ordered to remove the same therefrom within two days from the date hereof.

Given under our hands, at C., this first day of July, 1843.

*C. D., &c., Selectmen of C.*

4. They may employ such assistants and laborers as may be necessary, and if resisted shall have the same powers as sheriffs have by law to command assistance; and any person wilfully resisting them, or their assistants or laborers, in making such search, or removing any such nuisance or other thing aforesaid, shall on conviction be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars. *Ibid.*, sec. 4.

5. When the owner of any building, vessel or enclosure shall be unknown to the health officers, or shall not reside in town and the same shall be unoccupied, or the occupant is, in their opinion, unable to remove the same, they may, without any previous notice, immediately cause any nuisance or other thing, by them deemed injurious to the public health, found therein, to be removed or destroyed. *Ibid.*, sec. 5.

6. The owner or occupier of any building, vessel or enclosure shall be liable to pay the expense of the removal or destruction of any such nuisance or other thing as aforesaid, including the fees of the health officers who order or cause the same to be removed; and the same may be recovered by action, to be brought by the health officers in the name of the town. *Ibid.*, sec. 6.



7. If any person shall place or leave, or cause to be placed or left, in or near any highway, street, alley or public place, or wharf, or in any water where the current will not remove the same, any substance liable to become putrid, or offensive or injurious to the public health, he shall incur a penalty of not more than ten dollars nor less than one dollar, to be recovered by the health officers in the name of the town. *Ibid.*, sec. 7.

8. If any person shall use or occupy any building in the compact part of any town, for a slaughter-house, or house for trying tallow, or for currying leather, or for the deposit of green pelts or skins, without permission in writing of the health officers, he shall incur a penalty of ten dollars for each month in which the said building shall be so occupied. *Ibid.*, sec. 8.

9. If any person shall erect or continue any house of easement or privy, within forty feet of any street, or of the dwelling, shop or well of any other person, unless the same is vaulted six feet deep, and sufficiently secured and enclosed, or shall erect or keep any pen or sty for swine, so near the dwelling-house of another as, in the judgment of the selectmen, shall be a nuisance, he shall incur a penalty of ten dollars, and a like penalty for each month he shall continue the same after due notice of such judgment. *Ibid.*, sec. 9.

10. The health officers shall cause to be removed all nuisances, or other things deemed by them injurious to the public health, found in any highway, street, alley, public place or wharf, or in any water where the current will not remove the same. *Ibid.*, sec. 10.

11. The health officers shall be paid a reasonable compensation from the town, and all expenses incurred by them in the execution of their duty shall be paid by the town; and the selectmen are required to advance to them such sums as may be necessary, of which, and of all their receipts and disbursements, the health officers shall annually, before the annual town meeting, render an account to the selectmen, to be laid before the town. *Ibid.*, sec. 11.

12. Any town may appoint an agent for vaccination, who shall at all times be provided with suitable matter for communicating the kine pox, and may vaccinate all persons at the expense of the town who have not had the small pox or the kine pox, and shall receive a suitable compensation

therefor, to be paid by the selectmen. Such agent may be appointed by the selectmen of the town, whenever in their opinion the health of the inhabitants of said town, by reason of the spreading of the small pox, shall require. *R. S., ch. 120, sec. 1.*

The form of the appointment in such case may be similar to that of police officers.

13. The health officers may remove any person infected with the small pox, the malignant cholera, or other malignant pestilential disease, to some suitable house to be by them provided for that purpose, provided the same can be done without endangering the life of such person; and make such regulations respecting such house, and for preventing unnecessary communication with such persons, or their attendants, as they may think proper; and if any person shall wilfully violate the same he shall forfeit the sum of fifty dollars, to be recovered by such health officers in the name of the town. *Ibid., sec. 2.*

14. If any person shall, with intent to communicate the small pox, bring into this state or use any infectious matter, or shall inoculate himself or any other person with the small pox, or be inoculated therefor, he shall incur a penalty of one hundred and fifty dollars, to be recovered by any person who will sue for the same, one half to his own use and the other half for the use of the town in which the offence is committed. *Ibid., sec. 3.*

15. The court of common pleas, on application, may license any physician to establish a house for inoculating persons for the small pox in any town which shall consent thereto, under such regulations as they may prescribe; and such physician shall give bond to the county treasurer in the sum of three thousand dollars, conditioned that he will use every means and precaution in his power to prevent the spreading of the disease, and that he will not inoculate any person, nor willingly suffer any person to be inoculated, or to have said disease in any other place than said house, and will not suffer any person to depart from such house until he is effectually cleansed, and will give to such person a certificate thereof under his hand. *Ibid., sec. 4.*

16. If any person, having had the small pox in any licensed house, or being employed therein shall leave the same without such certificate, or be found without the same

within one month afterwards, he shall incur a penalty of fifty dollars, to be recovered by the health officers in the name of the town. *Ibid.*, sec. 5.

17. If any person shall break out with small pox in the natural way, and the health officers shall judge that he may remain without endangering others than his own family, they may give license to any persons who have been exposed to the danger of taking the disease, to be inoculated and to remain in the same house; and the provisions of this chapter, and all regulations of the health officers in relation to other licensed pest houses, shall apply to such house and its inmates. *Ibid.*, sec. 6.

## CHAPTER 57.

### OF SHOWS AND EXHIBITIONS.

- |                                   |                               |
|-----------------------------------|-------------------------------|
| 1. Shows without license illegal. | 4. Complaint and proceedings. |
| 2. Form and fees of license.      | 5. Form of license.           |
| 3. Penalty for violation.         |                               |

1. No showman, tumbler, rope-dancer, ventriloquist or other person shall for pay exhibit any feats of agility, or of horsemanship, or sleight of hand, rope-dancing or feats with cards, or any animals, wax figures, puppets, or show, without a license from the selectmen of the town. *R. S.*, ch. 125, sec. 1.

2. Every such license shall be in writing, and shall specify the days such person is allowed to perform or exhibit; and every such person shall pay for such license, for the use of the town, a sum not less than thirty dollars nor more than fifty dollars for each day such person shall perform or exhibit. *Ibid.*, sec. 2.

3. If any person shall violate the provisions of this chapter he shall for every such offence be punished by a fine of one hundred dollars, one half for the use of the town, the other half for the use of the complainant. *Ibid.*, sec. 3.

4. Any justice, on complaint of any violation of said provisions, may by warrant cause the offender to be arrested, and order him to recognize with sufficient sureties for

his appearance at the next court of common pleas, to answer for said offence. *Ibid.*, sec. 4.

5. The form of such license may be :

We, the subscribers, selectmen of the town of B., hereby license D. V. to exhibit his menagerie of animals within said town on the fourth and fifth days of July, 1843, he having paid to us sixty dollars therefor.

Given under our hands, at B., this third day of July, 1843.

A. B.	} <i>Selectmen</i>
C. D.	
E. F.	
	} <i>of</i>
	} <i>B</i> _____.

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## CHAPTER 58.

### GENERAL PROVISIONS RELATING TO THIS TITLE.

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|--|--|
| 1. Fines, how recovered, &c.<br>2. Penalties, how recovered, &c.<br>3. Recovery by town.<br>4. Trial, before whom to be.<br>5. Prosecution, when brought.<br>6. Computation of time.<br>7. General issue pleaded.<br>8. Who may be witnesses.<br>9. Defendant, when committed.<br>10. Costs, how to be taxed.<br>11. House of correction, what is. | 12. Form of complaint.<br>13. Form of warrant.<br>14. Form of mittimus.<br>15. Officer may require aid.<br>16. Penalty for obstructing.<br>17. Gaming houses illegal.<br>18. Penalty for winning over \$5.<br>19. Penalty for winning under \$5.<br>20. Fees of justices.<br>21. Fees of officers. |
|--|--|

1. All fines are to be recovered by information or indictment, and to be for the use of the county, if no other provision is made. *R. S.*, ch. 211, secs. 4, 13.

2. All penalties and forfeitures may be recovered by action of debt, before a justice of the peace of the county, if such penalty or forfeiture do not exceed \$13.33 ; otherwise before the court of common pleas, by any person who will sue for the same, unless otherwise provided by law ; and shall be half for the use of the county and half for the use of the prosecutor, unless otherwise limited by law. *Ibid.*, secs. 1, 2, 5.

3. When any part of any penalty or forfeiture is given to any town, the selectmen may sue therefor in the name of the town, which shall have the benefit and pay the expenses

of such suit ; and the selectmen may remit such penalty or forfeiture. *Ibid.*, sec. 11.

4. The trial in any suit or prosecution may be before any justice of the county, though the town in which he lives is interested in the penalty. *Ibid.*, secs. 6, 7.

5. When any part of a fine or penalty belongs to the prosecutor, the prosecution may be commenced within one year, unless a shorter time is limited. *Ibid.*, sec. 8.

6. When a penalty is imposed for a neglect for any space of time, such neglect may be alleged to have commenced on any specified day, and shall be reckoned therefrom. *Ib.*, sec. 3.

7. The defendant in any suit may plead the general issue, and give any special matter in evidence under it. *Ibid.*, sec. 7. In complaints the plea is "*not guilty*" or "*guilty*."

8. No person shall be disqualified as a witness, by reason of any interest in the penalty. *Ibid.*, sec. 10.

9. If any defendant shall refuse to perform the order of court, he may be committed to the common jail, until sentence is performed or he is discharged by law. *Ibid.*, sec. 12.

10. If the defendant is ordered to recognize, or pay a fine or penalty, he shall also be ordered to pay costs, or so much as the justice thinks proper. *Ibid.*, sec. 14.

11. When there is no house of correction in any town, the county house of correction, if any, may be used instead thereof; if there be neither, then the common jail of the county shall be used as such. *R. S.*, ch. 228, sec. 11.

12. The form of a complaint for a police offence, may be :  
*To B. B., Esquire, one of the Justices of the Peace in and for the County of Hillsborough.*

Complains D. D., of N., in said county, on oath, that N. C., in said county, yeoman, on the first day of July, in the year eighteen hundred and forty-three, at said N., was found drunk in a certain street in said N., called Main-street, contrary to the police of said town and the statute in such case made and provided, and against the peace and dignity of the state. Wherefore your complainant prays that the said N. C. may be apprehended, and dealt with as justice may require.  
D. D.

HILLSBOROUGH ss., *July 1, 1843.* Then the said D. D. appeared and made oath that the foregoing complaint by him signed is in his belief true. Before me,

*B. B., Justice of the Peace.*



If the name of the offender is not known, it is necessary to insert instead of the name some "*description by which he may be known.*" The form may be—"A person whose name is unknown, but who may be known by the following description, viz.: he was about six feet in height, stout built, with his left leg stiff, and wore a white hat, black coat and grey pantaloons."

13. Upon such complaint the justice should issue a warrant or a summons; the former to be issued when the object is to arrest the body, and the latter when no arrest is wanted. The form of the warrant may be:

THE STATE OF NEW-HAMPSHIRE.

HILLSBOROUGH SS. *To the Sheriff of said County, or his Deputy, or either of the Constables of the town of N., in said County.*



Whereas D. D., of N., in said county, has exhibited to me, B. B., one of the justices of the peace in and for said county, his aforesaid complaint on oath against N. C., of said N., yeoman:

In the name of said state we command you to arrest the body of the said N. C., and bring him before me, or some other justice of the peace for said county, to answer to said complaint; and we also command you to summon the said D. D., and P. L., of said N., to appear at the time and place of trial of said N. C., to testify what they know relative to said complaint. Herein fail not.

Given under my hand and seal, this first day of July, in the year eighteen hundred forty-three.

B. B., *Justice of the Peace.*

The form of the summons on such complaint may be the same as that of the warrant, omitting the words, "to arrest the body of the said N. C., and bring him before me, or some other justice of the peace for said county," and inserting instead—*to summon the said N. C. to appear before me, at my dwelling-house in said N., on Tuesday, the eighth day of July instant, at ten o'clock in the forenoon—.*

14. The form of the mittimus in such case may be:

HILLSBOROUGH SS. *To the Sheriff of said County, or his Deputy, or any Constable of the town of N., in said County.*



Whereas on the first day of July, in the year eighteen hundred forty-three, D. D., of N., in said county,

came before me, B. B., one of the justices of the peace in and for said county, and on oath complained that N. C., of said N., yeoman, on said first day of July, at said N., was found drunk in a certain street in said N., called Main street, contrary to the police of said town and the statute in such case made and provided, and against the peace and dignity of the state: And whereas on the same day the said N. C., being brought before me by virtue of a warrant issued on said complaint, and pleading not guilty to said complaint, and having heard the evidence on behalf of the said N. C., as well as on behalf of the state, it appearing that the said N. C. was guilty as aforesaid, it was ordered that he be sent to the house of correction in said N., and confined therein for the space of thirty days:

You are required, in the name of said state, to take the body of said N. C. and him commit to the house of correction in said N., and him deliver to the keeper thereof: and said keeper is ordered to receive and detain him in his custody, and him there set to work and labor, and otherwise deal with as the law directs, for the term of thirty days, or until he be discharged by due course of law.

Given under my hand and seal, this first day of July, in the year eighteen hundred forty-three.

B. B., *Justice of the Peace.*

15. Every sheriff, deputy sheriff or other officer, in the execution of his office for the preservation of the peace, or apprehending or securing any person violating the same, or for any other criminal matter or cause, may require suitable aid in the execution of his office; and if any person when so required shall neglect or refuse to give such aid or assistance shall be punished by a fine not exceeding ten dollars, for the use of the town where the offence is committed.

*R. S., ch. 178, sec. 12.*

16. If any person shall wilfully assault or obstruct any officer or other person duly authorized, in the service of any lawful process or order in any civil case, or in any criminal case the punishment of which is imprisonment in the common jail, and fine, or either, or shall rescue or attempt to rescue any prisoner lawfully arrested in any such case, he shall be punished by confinement in the common jail not exceeding one year, and by fine not exceeding three hundred dollars. *R. S., ch. 217, sec. 5.*

17. If any person shall keep any gaming house or place,

and shall suffer and permit any person to play at cards, dice, billiards, or at any bowling alley, or any game whatever therein, for money, hire, gain or reward, or to bet on the hands or sides of such as are so playing, such person shall be punished by a fine not less than ten dollars, nor more than two hundred dollars, or by imprisonment in the county jail not exceeding one year. *R. S., ch. 220, sec. 3.*

18. Every person who shall be convicted of winning at any one time or sitting, by gaming, or by betting on the sides or hands of such as are gaming, any money or goods to the value of five dollars or more, and of receiving the same or any security therefor, shall forfeit to the use of the town where the offence shall have been committed, double the value of the money or goods so won and received. *Ibid., sec. 4.*

19. If the money, &c., so won and received is less than five dollars, the penalty is not less than two dollars nor more than ten dollars. *Ibid., sec. 5.*

20. Justices of the peace shall be allowed the following fees in criminal cases :

For drawing a complaint, fifty cents ;

For a warrant founded on a complaint for any offence, twenty-five cents ;

For granting an appeal, seventeen cents ;

For each recognizance, seventeen cents ;

For taking bail of persons committed in criminal cases, for each offender thirty-four cents ;

For every examination, thirty-four cents ;

For entry of complaint and judgment thereon, fifty cents ;

For a warrant of commitment, and every other warrant except those before mentioned, fifty cents ;

For every adjournment, 17 cents. *R. S., ch. 229, sec. 2.*

21. The fees of constables and police officers shall be as follows :

For the service of every writ, notice or execution, except writs of subpœna for witnesses, twenty-three cents ;

For summoning witnesses, each, seventeen cents ;

For taking bail, (to be paid by the person bailed,) seventeen cents ;

For actual travel to serve any writ, process or execution, to be reckoned from the place of service to the residence of the officer, in no case exceeding 50 miles, each mile, 5 cents ;

For attending before justices on trials where his presence is required, each day, one dollar. *Ibid., sec. 14.*

## TITLE VIII.

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### REGULATIONS CONCERNING PROPERTY.

- CHAPTER 59. Of mills and their repairs.  
CHAPTER 60. Of fences and fence-viewers.  
CHAPTER 61. Of common fields.  
CHAPTER 62. Of pounds and impounding of animals.  
CHAPTER 63. Of floating timber.  
CHAPTER 64. Of strays and lost goods.
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### CHAPTER 59.

#### OF MILLS AND THEIR REPAIRS.

- |                                |                                     |
|--------------------------------|-------------------------------------|
| 1. Repairs in mills, how made. | 9. Form of such order.              |
| 2. Application to selectmen.   | 10. If not made, remedy.            |
| 3. Contents of application.    | 11. Mode and form of appraisal.     |
| 4. Form of application.        | 12. If mill lies in two towns.      |
| 5. Proceedings thereon.        | 13. Special contracts not affected. |
| 6. Form of order of notice.    | 14. Tolls of grist mills allowed.   |
| 7. Notice, how given.          | 15. Taking illegal tolls, penalty.  |
| 8. Repairs ordered to be made. | 16. What repairs may be made.       |

1. All necessary repairs in any mill, mill dam or flume owned by joint tenants or tenants in common; or in any mill dam or flume owned in severalty, when the privilege of the water is owned jointly or in common, shall be made by such owners in proportion to their respective interests therein. *R. S., ch. 135, sec. 1.*

2. When, in the opinion of any owner of any part or share of a mill, mill dam or flume, it shall be necessary that such mill, mill dam or flume be rebuilt or repaired, and the other part owners shall neglect to rebuild or repair the same immediately, he may apply by petition in writing to



the selectmen of the town in which such mill, mill dam or flume is situated, to appoint a time and place of hearing thereon. *Ibid*, sec. 2.

3. Such petition shall contain a description of the premises, of the names and shares of all persons interested therein who are known, and of the object of the hearing, and a request that such hearing may be appointed and notice thereof given according to law. *Ibid*., sec. 3.

4. The form of such petition may be :

*To the Selectmen of the Town of N., in the County of H.*

Respectfully represents A. B., of said N., that he is the owner of one undivided half of a certain saw-mill, with the dam, flume and privileges thereto belonging, situated in said N., and bounded thus : (here insert the description of the premises owned in common ; ) and that the other half of said mill, dam, flume and privileges is owned by C. D., of said N. ; that said mill, dam and flume are out of repair, and that it is necessary that repairs thereon should be made immediately ; that although said repairs have been necessary for some time, and though said C. D. has been notified thereof, and requested to make the same, (if the fact is so) yet the said C. D. has neglected to cause the same to be made : Your petitioner requests, therefore, that you will appoint a time and place of hearing on this petition, and cause the said C. D. to be duly notified thereof, and that you will order the said C. D. to make his proportionate part of the repairs which may be necessary on said mill, dam and flume, in such manner and within such time as you may think reasonable, and to pay such portion of the costs as may be just, and for other relief, according to the statute in such cases made and provided.

N , May 1, 1843.

A. B.

The name, residence and share of each part owner must be stated distinctly ; and if the owners and their residence are known, they should be requested to make the repairs before the petition is filed. Without this there will generally be no "*neglect*." If any part owner or his residence is unknown, or if the facts are different from those stated in the above form, the necessary alterations therein should be made. It may be under oath.

5. The selectmen shall appoint a time and place of hearing on such petition, and shall notify all persons interested



therein, by causing a true and attested copy of such notice to be given in hand to or left at the usual place of abode of every such person, at least fourteen days before the day of hearing, if such person is known and is an inhabitant of this state, otherwise by causing such notice to be posted up in two or more public places in the town, twenty days before the meeting, and published in some newspaper printed in the same county, if any there be, if not in some adjoining county, three weeks successively, the last publication to be not less than ten days before such day of meeting. *R. S., ch. 135, sec. 4.*

6. The form of the order of notice may be as follows, to be made on the petition itself:

Upon the foregoing petition it is ordered that a hearing thereon be had at the mill described in said petition, on the first day of June next, at nine o'clock in the forenoon, and that the said A. B. notify the said C. D., by causing a true and attested copy of the foregoing petition and of this order of notice thereon to be given in hand to or left at the usual place of abode of the said C. D., fourteen days at least before said day of hearing.

Given under our hands, this first day of May, 1843.

N. L.	} <i>Selectmen</i>
P. P.	
D. T.	
	<i>of</i>
	<i>N—.</i>

If any one of the owners is unknown, or is not an inhabitant of the state, the order of notice should be different. In such case, after the words, "day of hearing," at the end of the notice, add—*and by causing such notice to be posted up in two or more public places in said town of N., twenty days before said day of hearing, and published in the* , *printed in said county, three weeks successively, the last publication to be ten days at least before said day of hearing.*

If no one of the owners who is known resides in the state, omit the words, "be given in hand to or left at the usual place of abode of the said C. D., fourteen days before said day of hearing," and also the words at the beginning of the second form—"and by causing such notice to."—If the owner is unknown or out of the state, no personal notice is necessary, and the order should not require it. Such notice should be served by some officer or disin-

terested person—not by one who is interested in the petition.

7. If any person interested is a minor, married woman, tenant for life or years, mortgager or mortgagee in possession, or person under guardianship, the guardian of such minor, the husband of such married woman, such tenant, mortgager or mortgagee in possession, or guardian, shall be notified as aforesaid, and shall vote and contribute as if personally interested; and any sum so contributed and paid shall be a lien upon such estate and a legal charge against the person for whom the same is paid. *R. S., ch. 135, sec. 5.*

8. If upon any such hearing the selectmen or a majority of them shall be of opinion that such mill, dam or flume ought to be repaired or rebuilt, they shall order such delinquent part owner to repair or rebuild his part or share thereof, in such manner and within such time as they shall think reasonable, and to pay such portion of the costs as they shall award; but no order to rebuild shall issue unless assented to by the owners of one half at least of such mill, mill dam or flume. *Ibid., sec. 6.*

9. The order to repair on such hearing, if the selectmen order repairs to be made, may be attached to the petition and order of notice, (as in the case of laying out highways) and the form may be :

Upon the foregoing petition the subscribers, selectmen of the town of N., having caused notice to be given as aforesaid to all the owners of the mill, mill dam and flume described in said petition, to appear at said mill on the first day of June, eighteen hundred forty-three, at nine o'clock in the forenoon, upon the hearing of said petition; and having met at said time and place, and fully heard all parties who attended and all evidence offered in relation to the subject of said petition, and having made an examination of said premises, we are of opinion that said mill, dam and flume are owned in the manner set forth in the petition, and that the following repairs are necessary to be made, viz. : (Here insert what repairs are necessary, at length;) and that said C. D. has neglected to make the same. We therefore order that one half of all said repairs be made by the said C. D., within thirty days from the date hereof, in a good, substantial manner, and that said C. D. also pay the

sum of \_\_\_\_\_, being one half of the costs of said petition and hearing, to the said A. B.

Given under our hands, this first day of June, 1843.

N. L. } *Selectmen*  
 P. P. } *of*  
 D. T. } *N\_\_\_\_\_.*

10. If any such delinquent shall not comply with such order, any one or more of the other part owners may rebuild or repair his part or share of such mill, mill dam or flume, the cost of which shall be appraised by the selectmen aforesaid, and certified by them together with their own and all other fees, which sum may be recovered of such delinquent, with interest if he receives the benefit thereof, or otherwise shall be a lien upon such part, and the rents and profits thereof, until such sum, with interest thereon at the rate of nine per cent. and all taxes and repairs, shall be repaid in full. *R. S., ch. 135, sec. 7.*

11. Before any appraisal is made by the selectmen, they should appoint a time and place of hearing therefor, and cause the owners, if any, who reside in the state to be notified thereof by a copy of the notice. The form of the notice may be :

*To C. D., of N.*

You are hereby notified that we, the subscribers, selectmen of said N., will meet at the saw-mill owned by A. B. and yourself, in said N., on the twenty-fifth day of July instant, to appraise the cost of certain repairs made thereon, and on the dam and flume thereof, by said A. B., and which, upon a hearing duly had before us, on the first day of June last, you were ordered by us to cause to be made within thirty days thereafter, and which repairs, you not having complied with said order, have been made by the said A. B. at your expense, as he says.

Given under our hands, this fifteenth day of July, 1843.

N. L. } *Selectmen*  
 P. P. } *of*  
 D. T. } *N\_\_\_\_\_.*

The form of the certificate of appraisal may be :

Whereas the subscribers, selectmen of the town of N., did, on the first day of June last, examine a certain saw-mill, dam and flume in said N., owned by A. B. and

C. D., of said M., in common, and did upon a hearing duly had, after due notice to all persons interested, adjudge that certain repairs were necessary to be made therein, viz. (here insert the repairs ordered;) and that said A. B. and C. D. were each the owner of one undivided half of said mill, dam and flume, and that said C. D. had neglected to cause his just proportion of the necessary repairs to be made, and did therefore order said C. D. to cause one half of said repairs to be made within thirty days from said first day of June; and whereas said C. D. has not complied with said order, but has neglected to cause said repairs to be made, according to said order, and the said A. B., at his own proper cost and charge, has made said repairs, for which said C. D. is liable; we therefore do appraise the cost of the said repairs so ordered to be made by the said C. D., and made by said A. B. at the sum of fifty dollars, and that our fees for making said examination are three dollars. We also certify that the cost of notifying said C. D. was fifty cents, and the fees of witnesses in said examination one dollar ninety-two cents.

Given under our hands, this twenty-fifth day of July, 1843.

N. L. } *Selectmen*  
 P. P. } *of*  
 D. T. } *N—*.

12. If such mill, mill dam or flume shall be situate in more than one town, petition shall be made to and acted upon by the selectmen of all such towns, acting as one board. *Ibid.*, sec. 8.

13. If any special contract has been made by such part owners respecting rebuilding or repairing any mill, mill dam or flume, it shall not be affected by the provisions of this chapter. *Ibid.*, sec. 9.

14. The toll for grinding grain of any kinds shall not be more than one sixteenth part thereof, and for bolting not more than one sixty-fourth part thereof. *Ibid.*, sec. 10.

15. If any owner of any grist mill, or any person employed therein, shall take more toll than as aforesaid, he shall forfeit, for every offence, five dollars, to be recovered by action of debt in the name and to the use of the person injured thereby, and shall moreover be liable at the suit of the party injured for damages. *Ibid.*, sec. 11.

16. "It is very evident that, under this statute, one party is not authorized to call upon the other to erect a mill or

dam in a different place, or of a different character from that already existing. Nor can he, upon the neglect of the other to repair, proceed to erect a mill, or dam, or flume, substantially different from the former, and compel the other to pay. The statute authorizes a repair of the mill, &c. A rebuilding may, perhaps, under some circumstances, be considered a repair, within the meaning of the statute; but it cannot be extended beyond a substantial rebuilding. It does not authorize one party to erect a new mill, or dam, varying substantially in its dimensions and situation from the old." 9 N. H. R., 281.

## CHAPTER 60.

### OF FENCES AND FENCE-VIEWERS.

- |                                     |                                   |
|-------------------------------------|-----------------------------------|
| 1. Fences, how built or repaired.   | 14. Owner beginning to improve.   |
| 2. Division by parties made.        | 15. Value in such case appraised. |
| 3. Form of such division.           | 16. Forms of proceedings.         |
| 4. Fence-viewers may divide.        | 17. Owner ceasing to improve.     |
| 5. Application and notice, form.    | 18. Duties of fence-viewers.      |
| 6. Form of such division.           | 19. Fees of fence-viewers.        |
| 7. What fence is sufficient.        | 20. Applications to be written.   |
| 8. If fence insufficient, remedy.   | 21. Oath of fence-viewers.        |
| 9. Proceedings in such case.        | 22. If fence on town line, duty.  |
| 10. Such fence, how repaired.       | 23. Occupants deemed owners.      |
| 11. Expenses, how recovered.        | 24. Neglect of fence-viewer.      |
| 12. Proceedings to recover expense. | 25. Duties and rights of owners.  |
| 13. Double value allowed.           | 26. Fences on rail-roads.         |

1. The owners of adjoining lands under improvement shall build and repair the partition fence between them, in equal shares. *R. S., ch. 136, sec. 1.*

2. Any division of such fence, made by the parties in writing and recorded in the town records, shall be forever binding upon the parties, and all succeeding owners and occupants of the land. *Ibid., sec. 2.*



### 3. The form of such agreement may be :

This agreement, made between A. B. and C. D., both of N., in the county of C.,

WITNESSETH :

That whereas the said A. B. and C. D. are owners of two tracts of land in said N., adjoining each other, and bounded thus: (here insert a description of the premises;) and have agreed to make division of the fence on said line; now it is mutually agreed that the northerly half of said fence beginning at , and ending at , shall be forever built and kept in repair by said A. B., his heirs and all persons, owners of the land claiming under him; and that the southerly half thereof, beginning at , and ending at , shall be forever built and kept in repair by the said C. D., his heirs and all persons claiming under him.

In witness whereof we have hereto set our hands, this first day of May, 1843.

A. B. (*seal.*)

In presence of:

C. D. (*seal.*)

The town-clerk should record the agreement in the town book kept for that purpose, and add at the bottom—

A true record. Attest: R. M., *Town-Clerk.*

4. If the parties shall not agree upon a division, the fence-viewers of the town, upon application, shall make such division, which, being recorded in the town records, shall be of the same force as a division made by the parties, and a copy of such record shall be evidence. *Ibid.*, sec. 3.

5. It is now necessary that the application should be in writing. The following form may be used :

#### *To the Fence-Viewers of the town of M.*

You are hereby requested to make division of the fence between the lands of A. B. and myself, in said town, beginning at , and ending at , as the said A. B. and myself do not agree upon the same, and to cause the same to be recorded according to law.

C. D.

May 1, 1843.

Before making any division the fence-viewers must appoint a time and place of hearing, and give notice thereof to the parties a reasonable time. A week's notice will generally be sufficient. Service may be made by giving in hand to the person notified, or leaving at his usual place of abode, the original notice, and keeping an attested copy, on

which the return of service is made. The form of the order of notice may be :

*To A. B., of M.*

You are hereby notified that application in writing has been made to the subscribers, fence-viewers of the town of M., by C. D. of said M., to make division of the fence between the land of said C. D. and yourself, in said town, beginning at , and ending at , you not agreeing thereon: We therefore appoint Tuesday, the ninth day of May instant, at nine o'clock in the forenoon, and the north end of the line of said fence, as the time and place of hearing said application, when and where you may be present and be heard thereon.

Given under our hands, this first day of May, 1843.

D. D. } *Fence-viewers*  
E. G. } *of M——.*

6. The form of a division of a fence by fence-viewers may be :

Whereas on the first day of May, 1843, application in writing was made to the subscribers, fence-viewers of the town of M., in the county of B., by C. D., of said M., to make division of the fence between the lands of said C. D. and A. B., of said M., beginning at and ending at , both in said town, said A. B. and C. D. not agreeing on the division thereof, on which application we appointed Tuesday, the ninth day of May instant, at nine o'clock, in the forenoon, and the north end of the line of said fence as the time and place of hearing thereon, and caused said A. B. and C. D. to be duly notified thereof, we attended at the time and place of hearing so appointed, and having heard said parties and their evidence, and examined the fence on said line, we do make the following division thereof: That part of said fence beginning at , and ending at , we assign to said A. B., and order that the same be rebuilt and kept in repair by him, his heirs and assigns forever: That part of said fence beginning at , and ending at , we assign to said C. D., and order that the same be rebuilt and kept in repair by him, his heirs and assigns forever.

Our fees for said service are two dollars, one half of which shall be paid by each of said parties.

Given under our hands, this sixth day of May, 1843.

D. D., E. G., *Fence-viewers of M.*

B ss., *May 9, 1843.* Then appearing the said D. D. and E. G. made oath that in making division of said fence in the manner aforesaid, they acted impartially, uprightly and to the best of their judgment.

Before me, B. B., *Justice of the Peace.*

The notice, certificate of service and the division and oath should all be recorded in the town records by the town-clerk, and attested by him as true copies of the originals.

7. All fences, four feet high and in good repair, consisting of rails, timber, boards or stone walls; and all brooks, rivers, ponds, creeks, ditches, hedges and other things deemed by the fence-viewers to be equivalent thereto, shall be accounted legal and sufficient fences. *R. S., ch. 136, sec. 4.*

8. The fence-viewers, upon application of either party, shall view any fence alleged to be insufficient; and, if they judge the same to be insufficient, they shall limit a time for the building or repair of the same, and give notice to the delinquent party to build or repair the same within the time so limited. *Ibid., sec. 5.*

The notice by the fence-viewers to the owner to repair a fence, must state in what town the fence is; should describe the fence so that it may be readily known; and must be signed by the fence-viewers in their official capacity. They must be called fence-viewers in the notice itself. 15 *Pick. R., 125.*

9. The form of the application in substance may be:

*To the Fence-Viewers of the town of M., in the County of B.*

Whereas the fence between the land of A. B., of said M., and myself, situate in said M., has been heretofore divided, and the part thereof beginning at , and ending at , ordered to be kept in repair by the said A. B., and the part beginning at , and ending at , was ordered to be kept in repair by myself; and whereas that part of said fence assigned to me is now in good repair, but that part of said fence assigned to said A. B. is out of repair and insufficient: You are therefore requested to examine said fence, and to adjudge the same to be insufficient, and to order the said A. B. to repair his part thereof, according to the law in such cases made and provided. C. D.

*July 1, 1843.*

The form of the notice given by the fence-viewers upon such application may be :

*To A. B., of M., in the County of B.*

You are hereby notified that application in writing has been made to the subscribers, fence-viewers of the said M., to examine the fence between the land of C. D., of said M., and yourself, situate in said town, and beginning at , and ending at , which has heretofore been divided between you, and to order you to repair that part thereof which you are by law bound to repair : You are notified that we will attend at the dwelling-house of said C. D., in said M., on Thursday, the eighth day of July instant, at nine o'clock in the forenoon, for the purpose aforesaid, when and where you may attend, and be heard.

Given under our hands, this first day of July, 1843.

P. R. } *Fence-viewers*  
S. T. } *of M——.*

The notice is to be served in the manner previously stated, and in all cases an affidavit of service should be made on the back of the copy kept. The party can never serve a notice legally.

If the fence is adjudged to be insufficient, the notice to the delinquents, to repair it, may be in form thus :

*To A. B., of M., in the County of B.*

Whereas application in writing was made to us, the subscribers, fence-viewers of the town of M., in said county, on the first day of July, 1843, by C. D., of said M., to examine the fence between the land of the said C. D. and yourself, situate in said M., beginning at , and ending at , which has been heretofore divided between you, and to order you to repair that part thereof which you are by law bound to repair ; upon which application we appointed Thursday, the eighth day of July instant, at nine o'clock in the forenoon, at the dwelling-house of said C. D., in said M., as the time and place of hearing for the purposes mentioned therein, and caused you to be duly notified thereof ; and having attended at said time and place of hearing, and having examined said fence, and heard the parties and their evidence, we adjudge the part of said fence beginning at , and ending at , which said C. D. is bound to keep in repair, to be sufficient ; and the part of said fence beginning at , and ending at , which you are bound by



law to repair, to be insufficient; and order you to cause the same to be put in good repair within six days from the date hereof.

Given under our hands, this eighth day of July, 1843.

P. R. } *Fence-viewers*  
S. T. } *of M——.*

B ss., *July 8, 1843.* Then appearing the said P. R. and S. T., made oath that in making the foregoing division by them signed they had acted impartially, uprightly and to the best of their judgment.

Before me, B. B., *Justice of the Peace.*

This should be served on the delinquent, by giving him in hand, or leaving at his usual place of abode, a copy of the above order, attested by the fence-viewers as a true copy. The original in this case is to be *kept*, and the affidavit of service made upon it. The time fixed should be a reasonable one for making the repairs after notice is received, which should be given immediately.

10. If the party so notified shall not build or repair such fence within the time so limited, the owner of the adjoining land may build or repair the same. *Ibid.*, *sec. 6.*

11. The fence-viewers, upon application, shall view the fence so built or repaired; and if they judge the same and the residue of the fence between the same owners upon the same tract of land to be sufficient, they shall appraise the fence so built or repaired. *Ibid.*, *sec. 7.*

12. The application to appraise may be in form thus:

*To the Fence-Viewers of the town of M., in the County of B.*

Whereas on the eighth day of July, 1843, upon a hearing before you, upon an application by the subscriber, to examine the fence between the land of A. B., of said M., and myself, situate in said M., you adjudged the part thereof beginning at , and ending at , which the said A. B. is by law bound to repair, to be insufficient, and ordered him to cause the same to be put in good repair within six days from the date thereof, of which order said A. B. was duly notified on the same day; and whereas said A. B. has neglected to cause said repairs to be made according to said order, although said time has elapsed, and the subscriber, since the expiration of said six days, has caused said repairs to be made at his own cost and expense: You are requested to examine said fence and the repairs so made,



and appraise the same, according to the law in such cases made and provided. C. D.

*M—, July 18, 1843.*

The form of notice thereon may be :

*To A. B., of M., in the County of B.*

Whereas, on the eighth day of July, 1843, upon a hearing had, it was adjudged that the part of the fence between the land of C. D., of said M., and yourself, situate in said M., which you are by law bound to keep in repair, was insufficient, and you were ordered to cause the same to be put in good repair within six days from the date thereof, of all which you had due notice ; and whereas application has been made to us, fence-viewers of said M., by said C. D., alleging that you have neglected to cause said repairs to be made, and that after the expiration of said six days he caused the same to be made at his own cost and expense, and requesting us to examine and appraise the same : You are notified that we will attend for that purpose, at the dwelling-house of the said C. D., in said M., on the twenty-eighth day of July instant, at nine o'clock in the forenoon, when and where you may attend and be heard.

Given under our hands, this eighteenth day of July, 1843.

P. R. } *Fence-viewers*  
S. T. } *of M—.*

This notice may be served, by leaving the original and keeping an attested copy, as in section 5.

The form of the appraisal may be :

Whereas, on the eighteenth day of July, 1843, application in writing was made to the subscribers, fence-viewers of the town of M., in the county of B., by C. D., of said M., to examine the fence between the land of A. B. and the said C. D., situate in said M., beginning at , and ending at , which the said A. B. is by law bound to keep in repair, and which, upon proceedings duly had before us on the eighth day of July instant, was by us adjudged to be insufficient, and the said A. B. was ordered to cause the same to be put in good repair within six days from that date, of all which said A. B. had due notice, which said repairs have not been made by said A. B. according to said order ; but after the expiration of said six days were made by said C. D. at his own expense, and the cost of which he prays us to ap-

praise ; and having appointed the twenty-eighth day of July, 1843, at nine o'clock in the forenoon, at the dwelling-house of said C. D., in said M., as the time and place of making said examination and appraisement, and having caused the said C. D. to be duly notified thereof, and having attended at said time and place, and heard the parties and their evidence, we adjudge the part of said fence so put in repair by said C. D., and the residue thereof, between said A. B. and C. D., on the same tract, to be sufficient, and we appraise the cost of making said repairs at the sum of eight dollars ; and we certify that our fees for making said appraisal are two dollars.

Given under our hands, this twenty-eighth day of July, 1843.

P. R. } *Fence-viewers*  
S. T. } *of M—.*

B ss., *July 28, 1843.* Then appearing the said P. R. and S. T. made oath that in making the foregoing examination and appraisement by them signed they had acted impartially, uprightly, and to the best of their judgment.

Before me, B. B., *Justice of the Peace.*

13. The person so building or repairing such fence shall have the right to demand and recover double the said appraised value thereof of the delinquent party, with costs of suit, in an action of assumpsit for labor and materials. *Ibid.*, sec. 8.

“It is necessary that the portion of the fence belonging to a delinquent owner should first be adjudged by the fence-viewers insufficient or defective, and that the owner should have written notice from them of that fact, and be requested in writing to repair or rebuild it within the time limited, in order to entitle the adjoining owner to charge him with the expenses of rebuilding or repairing it himself.” 8 *Greenleaf R.*, 81.

14. If the owner of land shall have improved the same before the owner of adjoining land, and erected a division fence, he shall be entitled to demand and recover of such owner of the adjoining land, when he shall begin to improve, the value of such part of the fence as, upon any division of the fence then or previously made by the parties, or the fence-viewers, it was his duty to build. *Ibid.*; sec. 9.

15. In such case, if the parties do not agree, the fence-viewers on application shall appraise such fence, and the

party shall recover the value agreed upon or appraised, in an action of assumpsit for so much fence sold, if the same is not paid in thirty days after a demand thereof is made. *Ibid.*, sec. 10.

16. The form of the application may be :

*To the Fence-Viewers of the town of R.*

Whereas I have heretofore improved a certain tract of land in the southerly part of said R., adjoining the wood lot of A. B., of said R., and have erected at my own expense a division fence between said lands, beginning at , and ending at , the said A. B. not then improving his said land ; and whereas the said A. B. has now begun to improve said land, but neglects to pay his just part of the value of said fence ; you are requested to make division of said fence, to examine and appraise such part thereof as ought to be made by said A. B., and to proceed therein according to the law in such cases made and provided.

R , May 1, 1843.

C. D.

A division of the fence must be made before the builder of the fence can recover. Application for such division and for an appraisal may be made in the same petition.

The form of the notice thereon may be :

*To A. B., of R., in the County of C.*

You are hereby notified that application in writing has been made to the subscribers, fence-viewers of said R., by C. D., of said R., requesting us to examine, divide and appraise a certain division fence heretofore built by him at his own expense between his improved land and your unimproved land, in the southerly part of said R., beginning at , and ending at , your just part of the value of which you neglect to pay to him, although you have now begun to improve your said land ; and we appoint Tuesday, the tenth day of May instant, at nine o'clock in the forenoon, at the north end of the fence aforesaid, as the time and place of said examination and appraisal, when and where you may attend and be heard.

Given under our hands, this first day of May, 1843.

E. S. } Fence-viewers  
V. G. } of R.—.

This notice is to be served like that in section 5.

The form of the appraisal may be :

Whereas application in writing, on the first day of May, 1843, was made to the subscribers, fence-viewers of the town of R., in the county of C., by C. D., of said R., requesting us to examine and make division of a certain fence before that time built by him at his own expense, between his improved land and the unimproved land of A. B., of said R., situate in the southerly part of said R., beginning at , and ending at , his just part of the value of which said A. B. neglected to pay to said C. D., although said A. B. had begun to improve his said land, and to appraise his portion thereof; upon which application we appointed Tuesday, the tenth day of May instant, at nine o'clock in the forenoon, at the north end of said fence, as the time and place of examination and appraisal, and caused said A. B. and C. D. to be duly notified thereof; and having attended at said time and place, and heard the parties and their evidence, and examined said fence, and being satisfied that the allegations aforesaid are true, we do make division of said fence as follows: We order that the part thereof beginning at , and ending at , be kept in repair forever by the said A. B., his heirs and assigns; and the part thereof beginning at , and ending at , be kept in repair forever by the said C. D., his heirs and assigns; and we do appraise the value of the part of said fence which is to be kept in repair by said A. B., and which has been built by said C. D., at the sum of fifteen dollars.

We certify our fees in making said appraisal to be three dollars, two thirds of which we order to be paid by said A. B.

Given under our hands, this eighth day of May, 1843.

E. S. } *Fence-viewers*  
V. G. } *of R—*.

The oath may be the same as in *sec. 6*.

17. If any of the owners of adjoining land shall cease to improve his land, or shall lay the same in common, he shall not have a right to remove his part of the fence, but shall be under no obligation to repair or rebuild the same so long as said land shall lie in common. *Ibid.*, *sec. 11*.

18. The fence-viewers shall give notice in writing to the other party interested therein, of every application, and of the time and place appointed for considering the same; shall hear the parties, if they attend, and their evidence, and shall reduce their decision to writing, which shall be



signed; and they shall cause a copy thereof to be given to each of the parties within one week. *Ibid.*, sec. 13.

This last provision is an important one, and should be carefully remembered. It applies to every decision made by the fence-viewers upon an application. A copy of the decision, signed and attested by them as a true copy, should be given to each party within one week after the day of hearing. After copying the decision in full, with the signatures, add,

A true copy of the original. Attest:

A. B., C. D., *Fence-viewers of M.*

Notice in writing is also to be given before any hearing, to the parties interested; and every decision, it would seem, must now be sworn to as provided in section 21.

19. Each fence-viewer shall be allowed one dollar per day for his services, to be paid by the party making the application; and he shall be entitled to demand and recover the one half thereof of the other party, in an action of assumpsit for money paid for his use, unless in the opinion of the fence-viewers justice requires a different division of the costs; in which case they may so order. *Ibid.*, sec. 14.

20. Every application to the fence-viewers shall be in writing, and one application may embrace so many subjects as from the nature of the case may be acted upon at one meeting. *Ibid.*, sec. 15.

21. The decision of the fence-viewers, upon their being duly sworn before a justice that they have acted impartially, uprightly, and to the best of their judgment, shall be final and conclusive upon the parties. *Ibid.*, sec. 16.

This oath should be taken after the decision is made, and a certificate of the oath written by the justice on the decision, as in sec. 6.

22. If the fence in controversy is situate on the line of two towns, the application shall be made to the fence-viewers of the town in which the parties reside: if they reside in different towns, then to the fence-viewers of that town in which the applicant does not reside. *Ibid.*, sec. 17.

This refers to cases where the fence is on the line itself; not where a part of it is in one town and a part in the other.

23. The actual occupant of any land shall be deemed the owner thereof, for any of the purposes of this chapter. *Ibid.*, sec. 18.

24. If any fence-viewer, without sufficient cause, shall neglect to attend and perform any of the duties required by



law, he shall forfeit six dollars to any person who will sue for the same. *Ibid.*, sec. 18.

25. The party neglecting to build or keep in repair any partition fence which he is bound to maintain, shall be liable for all damages arising from such neglect, and shall have no remedy for any damages happening to himself therefrom. *Ibid.*, sec. 12.

“Unless the fence, or the line on which it is to be made, has been divided by a written agreement between the parties, or assigned pursuant to the statute, or by prescription, neither party is obliged to make or maintain any particular part of the partition fence. In such case each party at his peril is bound to keep his cattle on his own land.” 6 *Mass. R.*, 100.

“The public have no rights in a highway, but a right to pass and repass thereon; they cannot, therefore, justify turning their cattle thereon, for the purpose of grazing; and if cattle so on the highway, for the purpose of grazing, escape into the adjoining close, the owner of the cattle cannot avail himself of the insufficiency of the fences in excuse of the trespass.” 16 *Mass. R.*, 33.

“If I turn my horse into the highway, to feed on my own soil there, I am bound to keep him on my own soil; and if he escape into a part of the highway which runs through the land of my neighbor, and there feed, it is a trespass for which I am liable; and still more if my horse, being thus unlawfully on my neighbor's soil in the highway, break thence into his enclosure, I shall be liable, whether his fence were sufficient or not. Such, in our opinion, is the true meaning of the statute. It was not intended to give to any person the right of using the highway as a pasture, except to the owners of the soil; but the object of it was to compel the owners of lands adjoining highways to fence against every thing which might be lawfully in the highways.” 4 *N. H. R.*, 39.

“Every man is bound to fence against every thing that may be lawfully in the highway. But where two men own adjoining closes, with an undivided partition fence, which both are equally bound to keep in repair, each is bound to keep his cattle on his own land at his peril. But it is the occupier of a close who is bound to keep the fences in repair, and not the owner; and the occupier of lands where there are

no fences is bound by the same principle to keep the cattle he puts there upon the land." 7 *N. H. R.*, 521.

A division of all the fence in dispute between the parties, made in their presence by the fence-viewers, may be legal ; although the fence on the whole line between them be not divided at that time. 13 *Maine R.*, 423.

An occupant of land, who is bound to maintain a fence between his own and an adjoining enclosure, may place half of it, of reasonable dimensions, on the land of the adjoining owner ; and he may cut half of a ditch on the land of such owner, when a ditch is proper for a partition fence. 2 *Metcalf R.*, 180.

Where one of two owners of adjoining lots of land sees the other erect a permanent fence between their lands, without making any objection, this is evidence of an agreement on his part that the fence is erected on the true line. 8 *N. H. R.*, 378.

See references in chapter 62, "*Of Pounds.*"

26. If any rail-road corporation shall neglect to keep a sufficient and lawful fence on each side of their road, any person against whose land such fence is insufficient, may notify the agent of such corporation thereof; and if such fence shall not be made sufficient within twenty days after such notice, the owner of such land may make or repair such fence, and may thereupon recover of said corporation, in an action of assumpsit, double the amount necessarily expended in making or repairing the same, as aforesaid ; provided, however, that the foregoing provisions of this section shall not apply to any case where such corporation shall have settled with and paid the owner of such land for building and maintaining such fence.

If any person, having been thus settled with, and paid for keeping any such fence in repair, shall neglect so to do, such rail-road corporation may make such repairs, and recover the necessary expense thereof of the person liable. *R. S.*, *ch.* 142, *secs.* 6, 7.

## CHAPTER 61.

### OF COMMON FIELDS.

- |                                 |                                 |
|---------------------------------|---------------------------------|
| 1. Meeting of owners called.    | 4. Bounds renewed, when.        |
| 2. Division of fence, how made. | 5. Rights and duties of owners. |
| 3. Supported by tax, when.      |                                 |

1. When several owners of land have agreed or shall agree to improve the same in one common field, any justice, on application of two or more owners, may call a meeting of such owners, and the majority of them when met may determine in what manner the same shall be fenced. *R. S., ch. 136, sec. 20.*

The form of such application and warrant may be similar to that of calling a town meeting, where one has never been holden.

2. They may, in such way as they judge equitable, assign to each owner the share of his fence to be erected and maintained by him ; and such assignment, being recorded in the town records, every such owner and all succeeding occupants of his land shall be forever subject to all such liabilities in relation thereto as he would be if the same were a partition fence of his own land. *Ibid., sec. 21.*

The forms in such case may be similar to those in the preceding chapter.

3. Such owners may agree to erect and maintain such common fence by a tax ; and thereupon they may adopt by-laws ; and their officers shall have power, in conformity to such by-laws, to assess and collect such taxes. *Ibid., sec. 22.*

4. Owners of lands in common fields, or where there is no partition fence, shall once in every five years, on six days notice previously given, run the lines and mark and renew the bounds between them, on penalty of forfeiting five dollars for each neglect, for the use of the person giving such notice. *Ibid., sec. 23.*

The notice may be similar to that for the perambulation of the lines of towns.

5. The rights of the several owners in common fields, after an assignment of the fence, and in relation to the

fence so assigned, are the same as they would be if such fence had been assigned to him under *chapter 60*. For his rights and liabilities, and for forms, see that chapter.

## CHAPTER 62.

### OF POUNDS AND IMPOUNDING ANIMALS.

- |                                   |                                   |
|-----------------------------------|-----------------------------------|
| 1. Cattle, when impounded.        | 12. Proceeds, how disposed of.    |
| 2. Cattle, how impounded.         | 13. If no claimant, proceedings.  |
| 3. Notice for pound-keeper.       | 14. Pound to be provided.         |
| 4. Notice to owner, if known.     | 15. Rescue and pound breach.      |
| 5. Notice, if owner unknown.      | 16. Cattle rescued retaken.       |
| 6. Cattle, how released.          | 17. Evidence of rescue, what.     |
| 7. Appraisal of damages.          | 18. Cattle to be fed duly.        |
| 8. Proceedings thereon, mode.     | 19. Compensation for food.        |
| 9. Release on payment of damages. | 20. Fees of pound-keeper.         |
| 10. Petition for sale of cattle.  | 21. Fees of impounder.            |
| 11. Mode of proceeding thereon.   | 22. Rights and duties of parties. |
|                                   | 23. Rams going at large, penalty. |

1. Any person may impound any swine, neat cattle, horses, sheep or other creatures that shall be found doing damage in his enclosure, or any such creature found going at large in any highway, or street, or on any common, in violation of the laws of the state or any by-law of such town. *R. S., ch. 137, sec. 1.*

2. Such creatures shall be impounded in the public pound, if there is any in the town ; otherwise they may be impounded by the party taking up such creatures, in his own barn or enclosure. *Ibid., sec. 2.*

3. The person impounding any creatures shall leave with the pound-keeper, in writing, an estimate of the damage done by such creatures, or of the penalty incurred by the owner, and the amount of the fees and charges incurred. *Ibid., sec. 3.*

The form of the estimate of damage and charges, to be left with the pound-keeper, may be :

*To R. H., keeper of the pound in the town of S.*

I have this day taken up and impounded, in the town

pound under your care, one white horse, the property of W. F., of said S., found doing damage in my enclosure in said S., lying on the road leading from said S. to H., known as the Moore meadow. The damage demanded is two dollars. \$2.00

And the following fees and charges, viz.

Travel from said enclosure to the pound,			
one mile,	-	-	.6
Driving said horse to the pound,	-	-	.4
Notice to owner,	-	-	.25
Travel to serve notice, two miles,	-	-	.8
Keeping one day in pound,	-	-	.15
Pound-keeper, for impounding,	-	-	.5
			<hr/>
			\$2.63

S , May 1, 1843.

D. N.

If the horse was found going at large not doing damage, omit all after the word "*found*," down to "two dollars," and insert instead—*going at large in the public highway near my house in said town*. If the horse is impounded for a violation of a by-law of the town, add—*in violation of a by-law of said town, whereby the owner has incurred a penalty of one dollar*.

4. He shall, within twenty-four hours from the time of impounding, cause to be delivered to the owner or person who last had them in his possession or keeping, if known to him, or cause to be left at his usual place of abode, a notice in writing, describing the creatures impounded, stating his estimate of the damage done, and the time when and the place where the same was done, or of the penalty incurred, the amount of fees and charges then incurred, and the place of impounding. *Ibid.*, sec. 4.

The form of such notice may be :

*To W. F., of S.*

You are hereby notified that I have this day impounded in the common pound of the town of S. a white horse belonging to you, which was found this day doing damage in my enclosure in said S., lying on the road leading from said S. to H., known as the Moore meadow, when and where he did damage to the amount of two dollars. The fees and charges of impounding already incurred are as follows :



Travel from said enclosure to the pound,	
one mile, - - -	.6
Driving said horse to the pound, - - -	.4
Notice to owner, - - -	.25
Travel to serve notice, two miles, - - -	.8
Keeping one day in pound, - - -	.15
Pound-keeper's fee for impounding, - - -	.5
Amount of damages aforesaid, - - -	2.00
	<hr/>
	\$2.63

S , May 1, 1843.

D. N.

This notice should correspond with the notice left with the pound-keeper; and if the horse was found going at large, or has incurred a penalty, it should be altered accordingly.

The original notice should be given, and a true copy kept by the person making the service, who should be some person competent to be a witness in the case.

5. When the owner or keeper of any creatures impounded is not known, the person impounding the same shall, within the same time, post up a like notice in some public place in the town, and two adjoining towns. *Ibid.*, sec. 5.

The form of such notice may be :

*To whom it may concern.*

Taken up this day, doing damage in my enclosure in the town of S., lying on the road leading from said S. to H., called the Moore meadow, one white horse, the owner of which is unknown, when and where he did damage to the amount of two dollars, for which I have impounded said horse in the common pound of said S., and the fees and charges of impounding already incurred are as follows : (Here copy the charges, as before.) D. N.

S , May 1, 1843.

If the horse was taken up for going at large, the corresponding changes in this form should be made.

6. If the owner, or any party claiming such creatures, shall pay the penalty or estimated damages and charges incurred, to the person impounding, or to the pound-keeper, the creatures impounded shall be forthwith discharged from such pound. *Ibid.*, sec. 6.

7. If the owner or party claiming such creatures, shall neglect for the space of forty-eight hours, or shall refuse to pay

the damages estimated by the person impounding the same, either of said parties may apply to some justice of the peace, who shall notify the other party to appear before him, at a time and place appointed, as early as practicable; and after hearing the parties, shall appoint three disinterested persons to appraise such damages. *Ibid.*, sec. 7.

The form of such application may be :

*To B. B., Esquire, one of the Justices of the Peace within  
and for the County of H.*

Represents D. N., of S., in said county, that on the first day of May, 1843, he found in his enclosure in said S., lying on the road leading from said S. to H., known as the Moore meadow, one white horse belonging to W. F., of said S., doing damage therein; that the damage done by said horse amounted to two dollars, and for that cause he, the said D. N., impounded said horse in the common pound in said S. on the same day, and gave due notice thereof to the said owner of the horse, who has neglected, for the space of forty-eight hours after said notice, to pay said damage; wherefore the said D. N. prays that three disinterested persons may be appointed to appraise the damage done as aforesaid by said horse.

D. N.

It may be very proper that the applicant should make oath to this application, but it is not essential.

The form of the order of notice, to be attached to and made a part of said application, may be :

Upon the foregoing application it is ordered that the said D. N. give notice to the said W. F., to appear before me, at my dwelling-house in said S., on Tuesday, the fifth day of May instant, at nine o'clock in the forenoon, to shew cause, if any he have, why appraisers should not be appointed as requested in said application, by reading to the said W. F. the said application and this order thereon, or by leaving an attested copy of said application and order at his usual place of abode, three days at least before said day of hearing.

Given under my hand, this first day of May, 1843.

*B. B., Justice of the Peace.*

Upon the hearing, if no sufficient objection appears, the justice may issue his warrant to "three disinterested persons," to appraise the damages. The form of it may be :

*To A. C., D. E., and F. G., of S., in the County of H.*



Whereas application has been made to the subscriber, one of the justices of the peace in and for said county, to appraise the damage done by a horse belonging to W. F., of said S., in the enclosure of D. N., of said S., lying on the road leading from said S. to H., known as the Moore meadow, on the first day of May, 1843, you are hereby appointed to appraise the damage, if any, which may have been done as aforesaid; you are, as soon as practicable, to give to said parties due notice of the time when you will attend at the said meadow for the purpose aforesaid, that they may attend and be heard thereon, and to make report to me whether any damage was done by said horse at the time of his last being in said enclosure only, and of the sum at which you estimate the same.

Given under my hand and seal, this fifth day of May, 1843.

*B. B., Justice of the Peace.*

“Appraisers, appointed to estimate the damage done by cattle distrained doing damage, are not limited to the amount of damage claimed by the owner of the close in the notice of distress given by him to the owner of the cattle.” 18 *Pick. R.*, 422.

8. The appraisers so appointed shall notify the parties, and as early as practicable view the place where the damage is alleged to be done, and hear the parties and their evidence, and report to the justice whether any damage was done by such creatures at the time of their last being in such enclosure only, and the sum at which they estimate the same; and such report, signed by a majority of such appraisers, shall be conclusive upon the parties. *Ibid.*, sec. 8.

The form of the notice to the parties may be :

*To W. F., of S., in the County of H.*

You are hereby notified that the subscribers have been duly appointed appraisers to view a certain enclosure in said S., owned by D. N., of said S., lying on the road leading from said S. to H., known as the Moore meadow, in which it is alleged that a horse belonging to you did damage on the first day of May, 1843; and will attend at said meadow on the eighth day of May instant, at nine o'clock in the

forenoon, for the purpose of viewing the same, and estimating said damage, when and where you may attend and be heard.

Given under our hands, this fifth day of May, 1843.

B. C. }  
D. E. } *Appraisers.*  
F. G. }

This notice should be served by giving or leaving the original, and keeping an attested copy. At the time and place so appointed, the appraisers must attend and hear the parties ; and the form of their appraisal, which may be made on the warrant of appointment, may be :

By virtue of the within appointment, having given due notice to all the parties interested, of the time and place of hearing, for the purpose within mentioned, we met at the meadow within named, on the eighth day of May, 1843 ; and having heard the parties and their evidence, we are of the opinion that damage was done by said horse in said enclosure on the first day of May, 1843, which was the time of his last being in said enclosure ; and we estimate said damages done at that time only, at the sum of two dollars.

Given under our hands, this eighth day of May, 1843.

B. C. }  
D. E. } *Appraisers.*  
F. G. }

Fees, \$2.00.

H ss., *May 8, 1843.* Then appeared the said B. C., D. E. and F. G., and made oath that in making the foregoing appraisal and report they had acted impartially, uprightly, and to the best of their judgment.

Before me, B. B., *Justice of the Peace.*

The forms in this section are used only when the parties disagree about the amount of damages, and the application may be made by either party. The award should be returned to the justice immediately.

9. Upon payment of the damages so appraised and the charges incurred, with the fees of the justice and appraisers, to be assessed by the justice, such creatures shall be discharged from the pound. *Ibid.*, sec. 9.

10. If such creatures impounded shall remain in the pound for four days after the day of such notice being given or posted as aforesaid, the person impounding the same may



apply to a justice for the appraisal of the damages, if no appraisal has been made, and for an order for the sale or appraisal of such property. *Ibid.*, sec. 10.

*To B. B., Esquire, one of the Justices of the Peace in and for the County of H.*

Represents D. N., of S., in said county, that on the first day of May, 1843, he found a white horse belonging to W. F., of said S., doing damage in the enclosure of him, the said D. N., in said S., lying on the road leading from said S. to H., and on the same day impounded the said horse for that cause in the common pound in said S.; and on the second day of May aforesaid gave due notice thereof to the said W. F.; yet, although more than four days have elapsed since notice was given to the said W. F. as aforesaid, he has neither replevied the said horse nor paid nor tendered to the subscriber, nor to the pound-keeper, the amount of the damages claimed, nor the fees and charges of impounding. Wherefore the said D. N. requests that said damages may be assessed and said horse ordered to be sold, according to the statute in such case made and provided.

D. N.

S, May 6, 1843.

The form of the order of notice thereon, to be made a part of the application, may be :

Upon the foregoing application it is ordered that a hearing thereon be had at my dwelling-house in said S., on Tuesday, the tenth day of May instant, at one o'clock in the afternoon, and that said D. N. notify said W. F. to appear at said time and place, to shew cause, if any he have, why the request in said application should not be granted, by reading to the said W. F. the forgoing application and this order thereon, or by leaving at his usual place of abode an attested copy thereof, four days at least before said day of hearing.

Given under my hand, this sixth day of May, 1843.

B. B., *Justice of the Peace.*

For general directions see section 7. The application to the justice in these cases may be under oath; the justice may require it; and the order of notice is sometimes under seal. Both are very proper.

11. The justice, after notice and hearing the parties, may order such creatures, or so many of them as may be neces-



sary, to be sold at public auction by the person impounding the same, who shall give notice and proceed in such sale in the same manner as sheriffs are required to do in sales upon execution, or he may order them to be appraised in the same manner as damages are required to be appraised, in which case the person impounding shall take them to his own use at the appraised value. *Ibid.*, sec. 11.

Upon such hearing, if the application is granted, the justice will issue two orders; one appointing appraisers of the damages, (as in *sec. 7*.) and the other authorizing a sale or appraisal of the property. The appointment of appraisers may be the same as in *section 7*. If the property is to be appraised, the form of the warrant may be altered so as to embrace both the appraisal of the damages and the property. If the property is to be sold, the form may be:

*To D. N., of S., in the County of H.*



Application having been made to me, B. B., one of the justices of the peace in and for said county, by you, on the sixth day of May, 1843, representing that on the first day of May, 1843, you found a white horse, belonging to W. F., of said S., doing damage in your enclosure in said S., lying on the road leading from said S. to H., known as the Moore meadow, and on the same day impounded the same for that cause in the common pound in said S., and on the second day of May, 1843, gave due notice thereof to the said W. F.; and that, although more than four days had elapsed since said notice was given to said W. F., yet he had neither replevied said horse nor paid nor tendered to you nor to the pound-keeper the amount of the damages, nor the fees and charges of impounding, and requesting that said damages may be assessed and said horse ordered to be sold, according to law; and having appointed Tuesday, the tenth day of May, 1843, at one o'clock in the afternoon, at my dwelling-house in said S., as the time and place of hearing on said application, and caused said W. F. to be duly notified thereof, and having attended at said time and place and heard the parties and their evidence, it is ordered that after having posted up notices of the time and place of sale at two of the most public places in said town of S. forty-eight hours before the time of sale, you will then and there sell said horse at public auction to the highest bidder; and after deducting from the proceeds of said

sale, the costs thereof, and also the damages and all fees and charges of impounding, you are to pay the overplus, if any, to said W. F., upon request.

Given under my hand and seal, this tenth day of May, 1843. B. B., *Justice of the Peace.*

“When property is appraised for nonpayment of damages, the advertisement for its sale should not be posted up till after the appraisal is completed. The owner should have a right to redeem after the appraisal.” 21 *Pick. R.*, 55.

12. After payment of the penalty or damages and all costs, the overplus of such sale or appraisal shall be paid to the owner, upon request. *Ibid.*, sec. 12.

13. If after four days no owner appears, or if after an appraisal or order of sale any of the creatures impounded shall remain unclaimed, the person impounding may take such creatures out of the pound, and proceed with them as strays. *Ibid.*, sec. 13.

This section applies to those cases only where the owner is unknown; if the owner is known, there must be further proceedings.

14. Every town shall provide and maintain a good and sufficient pound, for impounding and restraining all creatures liable to be impounded; and if any town shall neglect to provide such pound, they shall incur a penalty of thirty dollars for each year they shall be destitute thereof, to be recovered by any person who will sue for the same, to his own use, or may be punished by fine of the same amount. *Ibid.*, sec. 14.

A town is liable to a penalty, if it neglect either to build or keep in repair a pound sufficient to confine cattle. 2 *N. H. R.*, 105.

15. If any person shall rescue any creature from the possession of any person, driving or being about to drive the same to the pound, or shall make any pound breach, or in any way directly or indirectly convey or deliver any creature out of any pound without lawful authority, he shall be punished by a fine of twenty dollars, or by imprisonment not exceeding six weeks. *Ibid.*, sec. 15.

“If one take cattle from the lawful custody of a field driver which he is driving, this is a rescue, although they are never out of the view of the field driver, and are finally yielded to him and impounded.” 17 *Mass. R.*, 342.

“Upon an indictment for pound breach the illegality of the distress cannot be shown in the defence. A party is not to judge for himself whether the imprisonment of his cattle is right or wrong. The statute gives him a different remedy. The defendant had no more right to break the pound than he would have to let a person out of jail because he was supposed to be unlawfully imprisoned.” 5 *Pick. R.*, 514.

16. The pound-keeper or person impounding may retake, within six days, any creature directly or indirectly conveyed or delivered out of the pound without lawful authority, and again impound and detain the same until the damages and costs are paid, with the additional cost of such retaking, or until the same is otherwise legally released. *Ibid.*, sec. 16.

17. If any creature so illegally conveyed out of any pound, shall be in any person's enclosure who shall refuse to deliver the same to the pound-keeper, or person who first impounded the same, upon demand, such refusal shall be sufficient evidence to convict such person of having released said creatures from the pound. *Ibid.*, sec. 17.

18. The pound-keeper, if there is any, otherwise the person impounding, shall cause the creatures impounded to be provided with food and drink suitable for such creatures, and upon neglect shall be liable to the owner for all damages arising therefrom. *Ibid.*, sec. 18.

19. The sum to be allowed for sustenance of creatures impounded, shall be—for cattle and horses, above one year old, fifteen cents per day, and for all other creatures seven cents per day each. *Ibid.*, sec. 19.

20. The fees to be paid to the pound-keeper shall be five cents each for every creature impounded, except sheep, which shall be two cents each, including the putting in and letting out; and the same fees in case of creatures retaken after pound breach. *Ibid.*, sec. 20.

21. The fees to the person impounding shall be six cents a mile for travel from the place of taking to the pound, and four cents a head for driving, if more than one mile; otherwise, two cents a head; for each notice, twenty-five cents, and four cents a mile for travel from the pound to the place where such notice shall be given or left, and the same fees in case of creatures retaken after pound breach. *Ib.*, sec. 21.

22. If a man finds stray cattle in his field he is not bound

to impound them or retain them for the owner, but may drive them off into the highway—18 *Pick. R.*, 227; but if he drive them, after they are in the highway, to a considerable distance, he will be a trespasser. 8 *N. H. R.*, 404.

23. If any person shall wilfully or negligently suffer any ram belonging to him, or in his care, to go at large out of his enclosure between the first day of August and the first day of December, in any year, he shall forfeit, for every such offence, the sum of five dollars, for the use of any person who will sue for the same, or who shall impound such animal. *R. S.*, ch. 128, sec. 3.

Swine unlawfully at large upon the highways in any town cannot be legally seized and impounded on the Sabbath; and a hog-reeve who seizes and impounds swine on that day is a trespasser. 4 *N. H. R.*, 153.

“A vote of a town, to restrain cattle from going at large within the limits of the town, is binding on persons, not inhabitants, whose cattle are found so going at large.

A turnpike road is a highway within the meaning of the statute restraining cattle from going at large.” 4 *Pick. R.*, 258.

The owner of a close is not obliged to fence but against cattle lawfully in the adjoining ground; and if all his fence be insufficient, yet if cattle do not escape through the insufficient fence, but are turned in, he may lawfully impound them doing damage. 4 *Mass. R.*, 471.

“No action can be maintained by the owner of a field against the owner of cattle rightfully on an adjoining close, and straying therefrom through an insufficient fence upon such field, unless the fence has been divided, and the owner of the cattle is thereby or in some way legally bound to keep the fence in repair; nor can the cattle be lawfully impounded for that cause. The person taking and impounding cattle without justifiable cause is liable to an action therefor. 14 *Maine R.*, 419.

It is the duty of a party impounding cattle to feed and water them as often as is required according to the usage of the country and of good husbandry;—where, therefore, a field driver, in warm weather, took up milch cows unlawfully going at large in the highway, and drove them to a town pound, and there restrained them from seven o'clock in the morning until five o'clock in afternoon, without giving them

food or water, it was held that he was a trespasser. 13 *Pick. R.*, 384.

A private individual, who impounds a beast taken doing damage, in a town pound, is not liable for any injury which such beast may receive from cattle confined in the same pound. 9 *Pick. R.*, 14.

## CHAPTER 63.

### OF FLOATING TIMBER.

- |                              |                                 |
|------------------------------|---------------------------------|
| 1. Timber on improved lands. | 7. Timber on unimproved land.   |
| 2. Timber to be advertised.  | 8. Illegal removal, penalty.    |
| 3. Damages, how assessed.    | 9. Stopping logs, &c., penalty. |
| 4. Forms of proceedings.     | 10. Stealing timber, what is.   |
| 5. Removal of timber, when.  | 11. Rights of the owners.       |
| 6. Forfeiture of timber.     |                                 |

1. Every owner of improved land shall have the right to detain all masts, logs or timber of any kind which shall be lodged thereon by the waters of any river or stream, until the damages occasioned to such land thereby, and by the removal thereof, and the expenses of advertising the same, shall be paid. *R. S.*, ch. 138, sec. 1.

2. Every such owner shall advertise all such logs and timber, in the month of September annually, by posting notices, describing the number thereof and the marks thereon, at one of the most public places in the same, and two adjoining towns, and causing a like notice to be recorded by the town-clerk. *Ibid.*, sec. 2.

The form of such notice may be :

*To whom it may concern :*

Found lodged on my improved land, in the town of L., situate on the Ammonoosuc river, and bounded thus : (here insert description ;) and left thereon by the waters of said river, ten logs, marked as follows, viz : (here insert the marks ;) said logs are detained by me until the damages occasioned thereby, and my fees and expenses, are paid.

L , September 1, 1843.

U. W.



Four of these notices are to be made, one to be posted up in the town in which the logs are found lodged, one in each of two adjoining towns, and the other left with the town-clerk. The posting up should be done by, or in the presence of, some person who can be a witness in the case, and some memorandum of the day of posting should be made.

3. If the owner or claimant of such logs or timber shall be dissatisfied with the damage and expenses demanded by the owner of such land, the selectmen, and in case a majority of them shall be interested, three justices, may on application, and after reasonable notice to the other party, assess such damages and expenses. *Ibid.*, sec. 3.

4. The form of such application may be :

*To the Selectmen of the town of L., in the County of G.*

Whereas sundry logs belonging to the subscriber, floating in the Ammonoosuc river, were lodged on the improved land of U. W., in said L., and are detained by him for the payment of damages and charges, and the sum demanded by him being more than in my opinion is reasonable, you are requested to assess said damages and expenses, according to the law in such cases made and provided. J. O.

L , October 30, 1843.

The selectmen should appoint a time and place of hearing on said application, and give to the person detaining the logs reasonable notice thereof. The notice may be served by any person who is a competent witness, by giving or leaving the original notice and keeping a copy. The form of the notice may be :

*To U. W., of L., in the County of G.*

You are hereby notified that application in writing has been made by J. O., of D., in said county, to us, the subscribers, selectmen of said L., to assess the damages and expenses occasioned to your improved land in said L. by reason of certain logs, belonging to said J. O., which were lodged thereon by the waters of the Ammonoosuc river, and detained by you until said damages and expenses were paid, the sum demanded by you being in his opinion more than is reasonable ; and that we will meet, for the purpose of assessing your said damages and expenses, at the dwelling-house of A. B., in said L., on the sixth day of November instant, at one o'clock in the afternoon, when and where you may attend and be heard thereon. .

Given under our hands, this first day of November, 1843.  
R. T., H. J., M. N., *Selectmen of L.*

The form of the assessment may be :

Application in writing having been made by J. O., of D., in the county of G., to us, the subscribers, selectmen of the town of L., in said county, to assess the damages and expenses occasioned to the improved land of U. W., of said L., situate in said L., by reason of certain logs which were lodged thereon by the waters of the Ammonoosuc river, and detained by said U. W. until said damages and expenses should be paid; and the sum demanded by said U. W. of said J. O., being in his opinion more than was reasonable; and having appointed the sixth day of November, 1843, at one o'clock in the afternoon, at the dwelling-house of A. B., in said L., as the time and place of making said assessment, and having caused said parties to be duly notified thereof, and having attended at said time and place, and heard said parties and their evidence, we do assess the damages occasioned to the improved land of said U. W. by said timber and by the removal thereof, at the sum of four dollars, and the expenses of advertising the same at the sum of two dollars.

Given under our hands, this sixth day of November, 1843.  
R. T., H. J., M. N., *Selectmen of L.*

No provision is made by the statute for the payment of the fees of selectmen; but as the proceedings are for the sole benefit of the owner of the logs, they need not act until the fees are paid.

5. On payment or tender of the damages and expenses so demanded or assessed, the owner of such logs and timber shall have the right to remove the same at any time within seven months after such notice is posted up as aforesaid. *Ibid.*, sec. 4.

6. If such logs or timber shall not be removed within said seven months, they shall be forfeited to the owner of the land, and he may convert the same to his own use, provided they have been duly advertised as aforesaid. *Ibid.*, sec. 5.

7. If any logs, masts or spars of any person shall be lodged on the unimproved land of any other person, they may be detained until the damages occasioned thereby and all costs are paid. *Ibid.*, sec. 6.

8. If any such logs or timber shall be removed by the owner, or any other person, without payment or tender of the damages and expenses as aforesaid, he shall be liable to the owner of such land therefor and for costs, in an action to be commenced within one year, and not after. *Ibid.*, sec. 7.

9. If any person shall wrongfully stop any masts, spars, or logs of any other person, or prevent them from floating down any river or stream; or if any person shall wilfully and fraudulently cut out or destroy the mark on such logs or timber, he shall be punished by imprisonment not more than thirty days or by fine not exceeding twenty-five dollars. *Ibid.*, sec. 8.

10. If any person shall wilfully and fraudulently take and carry away, or otherwise convert to his own use, either personally or by others in his employment and under his control, any log or timber of another, being in any river or stream or on the banks or meadows adjoining the same, he shall be adjudged guilty of larceny, and punished by imprisonment not less than thirty days nor more than one year, or by confinement to hard labor not exceeding two years. *Ibid.*, sec. 9.

11. The provisions of this chapter are not unconstitutional, and the title of the former owner to timber *forfeited* under it is wholly lost. 3 N. H. R., 325. But if the owner of the timber has removed it from the land on which it was lodged before the owner of the land took possession of it for the purpose of detaining it, the latter will have no right to seize it afterwards. He must “*detain*” it while on his land, or look to the owner of the timber for the damages. 4 N. H. R., 344.

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## CHAPTER 64.

### OF STRAYS AND LOST GOODS.

- |                                   |                                     |
|-----------------------------------|-------------------------------------|
| 1. Notice to town-clerk given.    | 8. Expenses, how adjusted.          |
| 2. Town-clerk to record notice.   | 9. Owner liable for expenses.       |
| 3. Notices to be posted up.       | 10. Neglect of finder, penalty.     |
| 4. Property, how appraised.       | 11. Neglect of town-clerk, penalty. |
| 5. Oath and return of appraisers. | 12. When taken up as strays.        |
| 6. Owner not appearing, remedy.   | 13. Fees and charges.               |
| 7. Property, when given up.       |                                     |

1. The person finding any money or goods, or finding

and taking up any stray beast, the owner of which is unknown, shall give to the town-clerk a notice in writing, describing the money, goods or beast, within six days after so finding and taking up the same. *R. S., ch. 139, sec. 1.*

The form of such notice may be :

*To whom it may concern :*

Notice is hereby given, that on the first day of May, 1843, I found doing damage in my enclosure, near my dwelling-house in the town of C., in the county of C., one red heifer, about three years old, with a white spot on her left rump, (or, *one buffalo skin, marked D. L.,*) the owner of which is to me unknown.

W. B. R.

C, May 2, 1843.

If the creature found is a horse or mule, or if any creature is found between the first day of November and the first day of April, the words, "*doing damage in my enclosure,*" need not be inserted. See *sec. 12.*

2. The town-clerk shall record such notice in a book to be kept by him for that purpose. *Ibid., sec. 2.*

3. The finder of such property shall, within six days after finding or taking up the same, post up a notice describing the money, goods or beast, at two public places in the town where the same was found ; and if the value thereof exceed five dollars, at some public place in each of two adjoining towns, or cause a copy of such notice to be published three weeks successively in some newspaper circulated in such towns. *Ibid., sec. 3.*

The notice posted or published may be the same as that given to the town-clerk in *sec. 1.*

4. If no owner shall appear within one month after notice given as aforesaid, the finder shall apply to a justice, who shall appoint three persons to appraise such property, unless the same be money. *Ibid., sec. 4.*

The form of such application may be :

*To A. B., one of the Justices of the Peace in and for the County of C.*

Whereas the subscriber, of C., in said county, on the first day of May, 1843, found in my enclosure, near my dwelling-house in said C., one red heifer, about three years old, with a white spot on her left rump, the owner of which is unknown ; and on the next day I gave a written notice thereof

to the town-clerk of said C., and also on the same day posted up like notices at the tavern of A. L., and the store of C. G., both in said C., and public places, and also at the tavern of R. P., in the town of H., and at the tavern of N. W., in the town of G., both in said county, and public places in said towns; and although more than one month has elapsed since said notices were given and posted as aforesaid, yet no owner has appeared to claim said property; you are therefore requested to appoint three persons to appraise said heifer, according to the statute in such case made and provided.

W. B. R.

C, June 3, 1843.

The appointment of appraisers may be made on the application itself, in which case the form may be :

To D. E., F. C. and L. Q., all of C., in the County of C.



Upon considering the foregoing application, and by virtue of the authority in me vested, you are hereby appointed and directed to appraise the property mentioned in said application, being first sworn to the faithful discharge of your duty, and to make return of your doings to me.

Given under my hand and seal, this third day of June, 1843.

A. B., *Justice of the Peace.*

5. The appraisers shall be sworn by the justice to the faithful discharge of their duty, shall appraise the property and make a return of their appraisal to the justice. *Ibid.*, sec. 5.

The form of the oath of the appraisers to be taken before the appraisal, and the certificate made on the back of the warrant, may be :

C, June 3, 1843. Then appearing the said D. E., F. C. and L. Q., made oath that in appraising the property mentioned in the within warrant they would act faithfully and impartially, and to the best of their judgment.

Before me, A. B., *Justice of the Peace.*

The form of the appraisal to be made on the warrant, may be :

The subscribers, appointed appraisers by the within warrant, have carefully examined the property set forth therein, and do upon oath appraise the value of said heifer to be ten dollars, and no more.

D. E. }  
F. C. } *Appraisers.*  
L. Q. }

C, June 3, 1843.



6. If the owner of such property or beast shall not appear and claim the same within one year after notice given to the town-clerk, the person finding or taking up the same may keep the property for his own use, upon paying to the town treasurer the residue of such money or the appraised value of such property or beast, after deducting the fees and expenses incurred. *Ibid.*, sec. 6.

7. The owner, within one year, upon paying or tendering to the finder a reasonable sum for the keeping, charges and fees incurred, shall be entitled to his property. *Ibid.*, sec. 7.

8. Any justice shall adjust and determine the amount of the fees and charges of the finder, clerk, appraisers and justice, and the expense of keeping, on application of any person interested. *Ibid.*, sec. 8.

9. The owner of any stray beast shall be liable to the person taking up the same, for such fees, charges and expenses, in case the beast should die without the fault or negligence of the finder. *Ibid.*, sec. 9.

10. If any person finding any property or taking up any stray beast, shall neglect to give notice to the town-clerk, or to post up notices as before prescribed, or to cause such appraisal to be made, he shall receive nothing for his services or expenses, and shall forfeit a sum equal to double the value of the property found or beast taken up. *Ibid.*, sec. 10.

11. If any town-clerk shall omit to record any notice as aforesaid, or if any person shall pull down or destroy any notice so posted, till the purpose thereof is answered, he shall forfeit the sum of thirty dollars. *Ibid.*, sec. 11.

12. No beast except horses and mules, shall be taken up as a stray from the first day of April to the first day of November in any year, unless the same shall be found doing damage in some enclosure. *Ibid.*, sec. 12.

13. The fees for notifying the clerk shall be twenty-five cents; for each advertisement twenty-five cents; for recording the notice ten cents; for appointing appraisers twenty-five cents; for receiving and recording the appraisal twenty-five cents; for adjusting the charges and expenses, twenty-five cents. *Ibid.*, sec. 13.

## TITLE IX.

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### DUTIES OF TOWN OFFICERS IN SPECIAL CASES.

CHAPTER 65. Of the drawing of jurors.

CHAPTER 66. Of the militia.

CHAPTER 67. Of surveyors, weighers and measurers.

CHAPTER 68. Of wild animals, dogs and sheep.

CHAPTER 69. Special duties of town-clerks.

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### CHAPTER 65.

#### OF THE DRAWING OF JURORS.

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|---------------------------------|---------------------------------------|
| 1. List of jurors, how made.    | 11. Name drawn excluded from box.     |
| 2. Number of names on list.     | 12. Record of drawing made.           |
| 3. Who are exempted.            | 13. Jurors to be notified.            |
| 4. Names to be put in jury box. | 14. Venire to be returned, &c.        |
| 5. Number of jurors ordered.    | 15. Drawing on emergency.             |
| 6. Venires for jurors issued.   | 16. Penalty for neglect of clerk, &c. |
| 7. Venire served on town-clerk. | 17. Penalty for neglect of jurors.    |
| 8. Notice of drawing given.     | 18. Penalty on selectmen.             |
| 9. Mode of drawing jurors.      | 19. Penalty on town-clerk.            |
| 10. If juror drawn insane, &c.  |                                       |

1. The selectmen of each town shall annually, in December, make a list of such persons as they shall judge best qualified to serve as jurors ; and the list thus annually made by the selectmen shall be by them kept and delivered over to their successors in office. *R. S., ch. 176, sec. 1.*

2. Such list shall not contain the names of more than fifteen persons in towns containing less than one hundred and

fifty rateable polls; twenty-five in all other towns containing less than three hundred; thirty in all other towns containing less than four hundred; thirty-five in all other towns containing less than five hundred; forty in all other towns containing less than twelve hundred; and forty-five in all other towns containing more than twelve hundred rateable polls. *Ibid.*, sec. 2.

3. The governor, secretary and treasurer of the state, judges and clerks of courts, register of probate, register of deeds, sheriffs and their deputies, counsellors and attorneys at law, ordained ministers and practising physicians and surgeons, are exempted from serving as jurors, and their names shall not be placed on said lists. *Ibid.*, sec. 3.

4. The names on said lists shall be written upon separate and similar pieces of paper, which shall be so rolled up that the names cannot be seen, and placed in a box, to be provided for that purpose by the selectmen, which shall be delivered to the town-clerk, to be kept by him under lock. *Ibid.*, sec. 4.

5. The courts shall direct the number of jurors to be summoned, and from what towns, in such manner that each town may furnish its due proportion of jurors in each year. *Ibid.*, sec. 5.

6. The clerk of the court of common pleas shall issue writs of venire facias, directed to the clerks of such towns as the court may order, forty days before the sitting of such court, requiring each of them to cause to be selected and returned so many jurors as are therein mentioned. *Ibid.*, sec. 6.

7. The clerk shall cause such venires to be delivered to such town-clerks twenty-five days, or to the sheriff forty days before the sitting of the court; and the sheriff shall cause all venires so delivered to him to be delivered to the town-clerks twenty-five days before the sitting of the court. *Ibid.*, sec. 7.

8. Each town-clerk, upon receipt of the venire, shall notify the selectmen of the time and place by him appointed for the selection of jurors, and post up a notice thereof in some public place in such town, seven days at least before the time so appointed. *Ibid.*, sec. 8.

The town-clerk should give notice to the selectmen *personally* of the time and place appointed, either by stating it to them or by leaving a written notice at the usual place of abode, seven days at least before the day appointed. A written notice is preferable, or a copy of the notice posted, but not

necessary. This is a change of the law. The form of the notice to be posted up may be :

*To the Inhabitants and Selectmen of the town of C., in the County of M.*



You are hereby notified that a meeting will be holden at the west meeting-house in said town, on Tuesday, the twenty-fifth day of February instant, at two o'clock in the afternoon, for the selection of one grand juror and two petit jurors, (*insert the number required by the venire*) to serve as such at the court of common pleas to be holden at C., in and for this county, on the first Tuesday of March next.

Given under my hand and seal, this eighteenth day of February, 1843. R. M., *Town-Clerk of C.*

This is to be posted up by the town-clerk, and afterwards preserved by him ; but it would be prudent for him to keep a copy, in case the original should be destroyed.

The form of the return of service on the notice may be :

M ss. This certifies that on the eighteenth day of February, 1843, I posted up the within notice at the west meeting house in said C., and on the same day gave to C. L., M. R. and F. P., selectmen of said town, notice to attend at the time and place, and for the purpose within mentioned. R. M., *Town-Clerk.*

9. At the time and place so appointed the town-clerk, in presence of the selectmen, whose duty it shall be to attend, and of such other persons as may choose to attend, shall draw from the box, held in such manner that the papers therein cannot be seen, the names of so many persons as are required by the venire. In the absence of the town-clerk one of the selectmen shall draw the same. *Ibid.*, sec. 9.

10. If any person whose name is so drawn has deceased, become insane, has removed from town, or is disabled by sickness, the town-clerk shall certify these facts on the venire, and draw another name. *Ibid.*, sec. 10.

11. The persons whose names are so drawn shall be returned to serve as jurors, and their names shall not be again placed in such box for the term of two years. *Ibid.*, sec. 11.

12. The town-clerk shall record the notice posted by him

as aforesaid, the names of the selectmen present, and of the persons drawn as jurors. *Ibid.*, sec. 12.

The notice and certificate of service should be recorded at length, including the town-clerk's name, and attested,

A true copy. Attest: R. M., *Town-Clerk.*

Under this he should record the drawing, as follows:

At the time and place appointed in the foregoing notice I attended, for the purposes mentioned therein, C. L. and F. P., selectmen of said town of C., being present, and then and there, in presence of said selectmen and others, the following persons were drawn to serve as jurors, at the court aforesaid, viz:

W. B. G., as grand juror.

H. C., as petit juror for the first week.

L. S., as petit juror for the second week.

A true record. Attest: R. M., *Town-Clerk.*

13. A notice in writing of his selection as a juror, of the court he is to attend, and of the day and hour he is to appear, shall be given to each juror or left at his usual place of abode, four days at least before the sitting of the court, by the town-clerk or a constable. *Ibid.*, sec. 13.

The form of such notice may be:

*To W. B. G., of C.*

You are hereby notified that you have been duly selected as a grand juror from this town, and you are to attend at the court of common pleas to be holden at C., in and for this county, on the first Tuesday of March next, at ten o'clock in the forenoon, for that purpose. Fail not at your peril.

R. M., *Town-Clerk.*

If the person is selected as a petit juror for the *second* week, after the words "this town," insert, *for the second week of the term*; also omit the words, "first Tuesday," and insert the day and hour on which he is to attend, as required by the venire.

14. The town-clerk shall certify upon the venire the names of the persons so selected as jurors, and that they have been notified as aforesaid, and cause such venire to be returned to the clerk of the court at the hour at which the juror has been notified to attend. *Ibid.*, sec. 14.

The certificate upon the venire may be:

M ss. This certifies that by virtue of the within



venire, I appointed the twenty-fifth day of February, 1843, at two o'clock in the afternoon, at the west meeting-house in the town of C., in said county, as the time and place of drawing the jurors within directed; and on the eighteenth day of February, 1843, I gave notice of said time, place and purpose to C. L., M. R. and F. P., selectmen of said town, and on the same day posted up at said meeting-house a notice thereof, under my hand and seal; and at said time and place, the said C. L. and F. P. being present, and all such others as chose to attend, W. B. G. was duly selected as grand juror, H. C. as petit juror for the first week, and L. S. as petit juror for the second week of the term of the court within mentioned; and on the twenty-sixth day of February, 1843, I notified the said W. B. G., H. C. and L. S. severally of their selection, and of the place, day and hour at which they must attend, as within directed.

R. M., *Town-Clerk of C.*

15. Upon any emergency, jurors may be selected while the court is in session. The venires shall be issued and notice of the time and place of such selection given, and the jurors drawn and notified forthwith; and the jurors so drawn and notified shall immediately attend the court. *Ibid.*, sec. 15.

16. If any clerk, sheriff or town-clerk shall neglect to perform any of the duties enjoined by this chapter, he shall be fined by the court in the sum of twenty dollars. *Ibid.*, sec. 16.

17. If any person selected as a juror, and duly notified to attend, shall, without sufficient cause, neglect to attend agreeably to such notice, he shall be fined by the court in a sum not exceeding twenty dollars. *Ibid.*, sec. 17.

18. If any selectman shall wilfully neglect to perform any duty required by this chapter, or shall put upon the list a greater number of names than is allowed by law, or shall put on the list the name of any person at his own request, or on the request of any other person, or shall withdraw from the box the name of any person legally put upon the list, or shall be guilty of any fraud or collusion with respect to the drawing of jurors, he shall be punished by a fine of fifty dollars for each offence. *Ibid.*, sec. 18.

19. If any town-clerk shall draw from the box a greater number of names than is mentioned in the venire, except

in cases provided, or shall put or suffer to be put in said box any name after the same is delivered to him as aforesaid, or shall be guilty of any fraud or collusion in respect to the drawing of jurors, he shall be punished by a fine of fifty dollars. *Ibid.*, sec. 19.

## CHAPTER 66.

### OF THE MILITIA.

- |                                       |                                 |
|---------------------------------------|---------------------------------|
| 1. Payments by exempts.               | 5. Who are entitled.            |
| 2. Tax on company not officer-<br>ed. | 6. Certificate of full service. |
| 3. Equipments for poor minors.        | 7. Certificate in special case. |
| 4. Payment to soldiers.               | 8. Rations at muster paid.      |
|                                       | 9. Penalty for neglect.         |

1. Persons conditionally exempted from military duty are required to pay two dollars, and persons conscientiously scrupulous of bearing arms three dollars, into the treasury of the towns in which they reside, on or before the twentieth day of April in each year, and the treasurer or selectman receiving it shall give a receipt for the same, and retain the money for the use of the town. *R. S.*, ch. 76, secs. 2, 3.

2. When the roll of any company which is without officers shall be returned to the selectmen of the town in which the persons enrolled reside, the selectmen shall assess on each the sum of three dollars annually, so long as such company is unorganized, and issue their warrants therefor to the collector, who shall collect the same as other taxes are collected, and pay the same to the selectmen. *R. S.*, ch. 77, sec. 9. One half of the money so collected shall be paid to the state treasurer, and the residue to the selectmen, for the use of the town. *Ibid.*, sec. 10.

3. The selectmen shall provide forthwith, at the expense of the town, necessary arms and equipments for every minor liable to do military duty, whose parent, master or guardian is unable to furnish the same, and shall permit the captain to de-

liver the same to such minor whenever his company is ordered out for military duty ; and such captain shall be responsible for the safe return of such arms and equipments to the place of deposit provided by such selectmen. *R. S., ch. 79, secs. 9, 10, 11.*

4. Every officer, non-commissioned officer, musician or private, who shall be fully equipped, and shall personally perform all the duties required by law, shall receive, in the month of October annually, from the selectmen of the town in which he resides, the sum of one dollar for his services ; but no person shall be entitled to receive said sum unless he is by law required to perform military duty, except such persons as have enlisted in some uniformed company. *R. S., ch. 83, sec. 1.*

5. No person shall be entitled to such payment unless he shall present to the selectmen satisfactory evidence, under oath of the commanding officer of the company, regiment or brigade to which he belongs, that he has so performed his duty. *Ibid., sec. 2.*

The form of the certificate required in sections 5 and 6 may be :

This certifies that the following persons, duly enrolled and liable to do military duty in the third company of infantry in the town of H., commanded by the subscriber, captain thereof, have been fully equipped, and have faithfully and properly performed in person all their duties in said company during the past year, viz. A. B., C. D. ; (here insert all the names.)

And I further certify that said list contains the names of no persons who have not been equipped and have not performed all their duties in the manner aforesaid.

G. W. P., *Captain.*

H ss., *October 10, 1843.* Then the said G. W. P. appearing, made oath that the foregoing certificate, by him subscribed, is in his belief true.

Before me, B. B., *Justice of the Peace.*

If the certificate is for a single training (as in section 7,) omit the words, " during the past year," and insert instead, *at the inspection of said company on the third Tuesday of May, 1843 ;* or as the case may be.

6. Every captain shall, in October annually, and after the annual muster, if there be any, make a list of the persons

who have faithfully and properly performed all their duties in his company, and certify under oath that the said list contains the names of such persons and no others, and return the same to the selectmen of the towns in which any of such persons may reside. *Ibid.*, sec. 3.

7. Every captain shall, upon request, certify under oath the several times which any person who has enlisted or removed into any other company, shall have faithfully performed his duty under his orders; and if the person has performed all the duties required by law for the preceding year, although said duty may have been performed in different companies, such person shall be entitled to receive one dollar for his services. *Ibid.*, sec. 4.

8. The selectmen of each town and place shall pay to each officer, non-commissioned officer, musician and private of their respective towns, who shall be on duty at any regimental muster, fifty cents, to be there paid on parade; and the captain of each company shall give notice to the selectmen, six days before such muster, of the time and place thereof, and the number of men liable to do duty under his command. *Ibid.*, sec. 5.

The form of such notice may be :

*To the Selectmen of the town of N.*

You are hereby notified that the regimental muster for this regiment will take place at \_\_\_\_\_, in the town of C., in this county, on the twentieth day of September instant, and that the number of men liable to do duty in the third company of infantry in said regiment, under my command, is sixty-five.

N \_\_\_\_\_, September 12, 1843. T. S., Captain.

9. The selectmen shall forfeit seventy-five cents for each person to whom they neglect to pay said sum of fifty cents, after being so notified, to be recovered by the captain, and by him paid over to the persons entitled thereto. *Ibid.*, sec. 6.

## CHAPTER 67.

## OF SURVEYORS, WEIGHERS AND MEASURERS.

- |                                      |                                    |
|--------------------------------------|------------------------------------|
| 1. Surveyors and cullers chosen.     | 14. Weights and measures sealed.   |
| 2. Duty of surveyors.                | 15. Measure of charcoal.           |
| 3. Duty of cullers.                  | 16. Heaped measure regulated.      |
| 4. Plank, how measured.              | 17. Illegal weights, &c., penalty. |
| 5. Ship timber, how measured.        | 18. Not procuring standards.       |
| 6. Fees of surveyors and cullers.    | 19. Seal to be provided.           |
| 7. Penalties for fraud, &c.          | 20. Decimal hundred to be used.    |
| 8. Penalties for neglect.            | 21. Weighers, how to weigh.        |
| 9. Cord-wood, how measured.          | 22. Penalty for fraud.             |
| 10. Measurers to be chosen.          | 23. Weighers of cattle appointed.  |
| 11. Neglect of measurer, penalty.    | 24. Beef cattle to be weighed.     |
| 12. Standard weights, &c., provided. | 25. Fees of weighers.              |
| 13. Sealers to be chosen.            | 26. If not weighed, penalty.       |

1. One or more surveyors of lumber, and cullers of hoops and staves, shall be chosen by the inhabitants of each town at their annual meeting, who shall be skilled in such business, and shall hold their offices one year, and until others are chosen in their stead. *R. S., ch. 106, sec. 1.*

2. The surveyor of lumber shall survey all plank, boards, spars, slitwork, shingles, clapboards and timber previous to the sale thereof, and shall measure the same, if necessary, having due consideration for drying and shrinking, making reasonable allowance for rots, knots and splits; he shall mark the same anew to the just contents thereof, if required by the seller or purchaser, and give a certificate of the quantity and sorts, if required, on payment therefor. *Ibid., sec. 2.*

3. The cullers of hoops and staves shall view and cull all hoops, staves and heading, previous to the exportation thereof, and shall give a certificate of the quantities, on payment therefor. *Ibid., sec. 3.*

4. The standard of the thickness of merchantable plank shall be two inches; and when any plank of a different thickness shall be purchased, it shall be admeasured and calculated by that standard. *Ibid., sec. 4.*

5. All round ship timber shall be measured according to the following rule, viz: a stick of timber sixteen inches in



diameter and twelve inches in length, shall constitute one cubic foot, and in the same ratio for any other size and quantity; forty feet shall constitute one ton. *Ibid.*, sec. 5.

6. Surveyors and cullers shall receive the following fees: for surveying shingles and clapboards, four cents per thousand, to be paid by the buyer; for viewing and culling barrel staves, twenty-eight cents per thousand; for hogshead staves, thirty-four cents per thousand; for pipe staves, forty cents per thousand; for butt staves, forty-five cents per thousand; for shooks, one third of a cent each; for hoops, fifty cents per thousand, and for heading thirty-three cents per thousand; the fees for such survey to be paid by the owner, and the fees paid for the survey of the merchantable to be by him recovered of the buyer; for surveying boards, timber and other lumber, eight cents per thousand feet for viewing only; and eight cents additional per thousand feet for measuring and marking; and in the same proportion in all cases for a less quantity. *Ibid.*, sec. 10.

7. If any surveyor or culler shall be guilty of any fraud or deceit in the surveying or culling of any boards, staves, hoops, shooks, heading, shingles, clapboards or timber, or shall connive at, or allow of any breach of this chapter, he shall forfeit for each offence thirty dollars. *Ibid.*, sec. 13.

8. If any surveyor or culler shall unreasonably refuse or neglect to attend to his duties upon tender of the fees therefor, he shall forfeit for each offence three dollars. *Ibid.*, sec. 14.

9. All cord-wood exposed to sale shall be either four feet, three feet or two feet long, including half the kerf; and being well and closely laid together, a quantity measuring eight feet in length, four feet in width and four feet in height shall constitute one cord. *R. S.*, ch. 107, sec. 5.

10. Measurers of wood shall be chosen by each town at the annual meeting, who shall be duly sworn, and whose duty it shall be to measure any wood, when requested, and give a certificate thereof; and for such measurement and certificate he shall be paid at the rate of four cents per cord, to be paid by the purchaser. *Ibid.*, sec. 6.

11. If any measurer, upon tender of his fees, shall unreasonably neglect or refuse to measure or certify any wood so brought to him for that purpose, or shall give any false certificate, he shall forfeit for each offence five dollars. *Ibid.*, sec. 11.

12. The selectmen of each town, when necessary, shall provide, at the expense of such town, one complete set of weights and measures, and a scale beam, which shall be duly proved and sealed by the county sealer, and shall be kept and used as the standards for such town; and said standards shall be tried and proved by the county standards once in every five years. *R. S., ch. 110, sec. 4.*

13. Each town in this state at its annual meeting shall choose a sealer of weights and measures in and for said town, who shall be sworn to the faithful discharge of his duty, who shall hold his office for one year, and until some other person is chosen and qualified in his stead. *Ibid., sec. 5.*

14. Such town sealer shall try and prove all scale-beams, steel-yards, weights and measures which shall be brought to him for that purpose, and shall seal all such as are agreeable to the town standards as aforesaid. He shall be paid for trying and proving, whether sealed or not, two cents for each scale-beam, steel-yard, weight and measure, except that after the first sealing he shall be paid one cent only for each so long as they continue just with the standard. *Ibid., sec. 6.*

15. Every basket or other measure by which charcoal shall be measured or sold, shall not be less in its average diameter than twenty inches, and of a depth sufficient to contain eighteen gallons level measure, which shall be accounted two bushels, or one strike. *Ibid., sec. 7.*

16. All measures by which meal, fruit and other things usually sold by heaped measure, excepting charcoal, shall be sold, shall be of the following dimensions: The bushel not less than eighteen inches and a half in diameter inside, the half bushel not less than thirteen inches and three quarters in diameter inside, the peck not less than ten and three quarter inches in diameter inside, and the half peck not less than nine inches in diameter inside. *Ibid., sec. 8.*

17. If any person shall sell or dispose of any goods, wares, merchandize, grain or other commodities by any scale-beam, steel-yard, weights or measures, not proved and sealed as aforesaid, or shall fraudulently sell or dispose of any commodities by any scale-beam, steel-yard, weights or measures, which have been sealed but are unjust, he shall forfeit for each offence not less than one dollar nor more than ten dollars, one half thereof to the use of the prosecutor, the other half to the use of the town in which such offence is committed. *Ibid., sec. 9.*

18. If the selectmen of any town shall neglect to procure a set of weights and measures for such town, as is herein before provided, they shall forfeit one hundred dollars. *Ibid.*, sec. 10.

19. The town sealer shall use such seal as the town may agree on, a record of which shall be previously made in the town records. *Ibid.*, sec. 11.

20. When any commodity shall be sold by the hundred weight, it shall be understood to mean the net weight of one hundred pounds avoirdupois; and all contracts concerning goods sold by weight shall be construed accordingly. *Ibid.*, sec. 12.

21. Every public or town weigher of goods or commodities shall weigh the same according to the provisions of the preceding section, and make his certificate accordingly. *Ibid.*, sec. 13.

22. If any such weigher shall offend against the provisions of the preceding section, he shall forfeit a sum not exceeding five dollars, one half to the use of the town, the other half to the use of the prosecutor. *Ibid.*, sec. 14.

23. The selectmen of every town where beef cattle are sold, for the purpose of market or barrelling, shall appoint one suitable person or more, who shall be conveniently situated in such town, and not dealers in cattle, to be weighers of beef, who shall be sworn to the faithful discharge of the duties of said office. *R. S.*, ch. 100, sec. 26.

24. All beef sold as aforesaid shall be weighed by such sworn weigher, and a certificate of the weight of all the beef, hide and tallow of each head of cattle, unless otherwise requested by the seller, in the form following, shall be signed by such weigher, and delivered to the seller on payment of the fees therefor:

*Form of Certificate.*

This certifies that I have fairly and properly weighed the  
cattle      bought by      of      from      of      this  
day of      18      .

Number of head.						
Beef.						
Hide.						
Tallow.						
Total weight.						

, Sworn Weigher.

25. The weigher shall receive for the first six head of cattle weighed, seventeen cents per head; for the second six head weighed, twelve and a half cents per head; for all over twelve and under twenty head, eight cents per head; and for all over twenty head, five cents per head, which shall be paid by the buyer of such cattle; and twelve and a half cents for each certificate, which shall be paid by the seller. *Ibid.*, sec. 28.

26. If any butcher or purchaser of beef cattle intended for market or barrelling, shall cause any such beef cattle to be weighed contrary to the intent of this chapter, he shall forfeit fifty dollars for each offence, to be recovered by action of debt, one half to the use of the prosecutor, and the other half to the use of the county; but nothing herein contained shall prevent any person from buying or selling cattle on the hoof, or from determining the weight of such cattle in any mode agreed on by the parties. *Ibid.*, sec. 29.

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## CHAPTER 68.

### OF WILD ANIMALS, DOGS AND SHEEP.

- |                                 |                              |
|---------------------------------|------------------------------|
| 1. Bounty on wolves.            | 6. By-laws for dogs made.    |
| 2. Bounty on bears.             | 7. Furred animals protected. |
| 3. Bounty on wildcats.          | 8. Brand or mark of sheep.   |
| 4. Bounties paid by state.      | 9. Altering mark, penalty.   |
| 5. Dogs without collars killed. |                              |

1. If any person shall kill any wolf, or wolf's whelp within this state, and shall produce the head thereof to the selectmen of the town within which it was killed, or if there be no selectmen in such town, then to the selectmen of the nearest town having such officers, and shall prove to the satisfaction of such selectmen that such wolf, or wolf's whelp was killed by himself, or by some person whose agent he is, the selectmen shall cut off the ears from the head so produced, and shall otherwise so disfigure the same that it shall

never again be offered for a bounty, and shall pay to such person or his order twenty dollars for every wolf, and ten dollars for every wolf's whelp killed as aforesaid. *R. S., ch. 127, sec. 1.*

2. If any person shall kill any bear within this state, and shall proceed with the same as is directed in the first section of this chapter, he shall receive therefor the sum of two dollars. *Ibid., sec. 2.*

3. If any person shall kill any wild-cat, known by the name of Siberian Lynx, within this state, and shall proceed with the same in the manner directed in the first section of this chapter, he shall receive therefor the sum of one dollar. *Ibid., sec. 3.*

4. The selectmen of every such town shall keep a true account of the moneys so paid, and the number of each species of animal for which bounties have been paid; and upon the presentation of such account, certified by a majority of such selectmen to be just and true, to the treasurer of the state in the month of June, the same shall be paid from the state treasury, either to the representative of such town, or to the selectmen thereof or their written order. *Ibid., sec. 4.*

The form of such account may be :

*The State of New-Hampshire, to the Town of Colebrook, Dr.*  
1843.

April 1.	To cash paid A. B., for bounty on one wolf,	- - -	\$20.00
April 10.	To cash paid C. D., for bounty on a Siberian lynx,	- - -	1.00
April 12.	To cash paid E. F., for bounty on one bear,	- - -	2.00
April 15.	To cash paid G. H., for bounty on three wolves' whelps,	- - -	30.00
			<hr/> \$53.00

We, the subscribers, selectmen of said town of Colebrook, hereby certify that the foregoing account is just and true; that said sums were paid by said town as therein stated, and that the heads of the animals therein mentioned were brought to us, and by us disfigured according to law, and that in our opinion said bounties were justly due.

D. P. } *Selectmen*  
L. R. } *of*  
E. M. } *Colebrook.*



5. No person shall be liable by law for killing any dog which shall be found not having around his neck a collar of brass, tin or leather, with the name of the owner or owners carved or engraved thereon. *Ibid.*, sec. 5.

6. Any town may make by-laws for licensing, regulating or restraining dogs, as they shall deem expedient, and may affix penalties for the violation thereof, not exceeding five dollars, and the sum to be paid for any license, not exceeding two dollars. *Ibid.*, sec. 6.

7. If any person shall, at any time between the thirtieth day of May and the first day of November, in any year, by shooting, trapping or otherwise, kill or destroy any beaver, mink, otter or musk-rat, he shall forfeit for every mink or musk-rat so killed one dollar, and for every beaver or otter so killed five dollars, to be recovered by action of debt in the name and to the use of any person who will sue therefor. *Ibid.*, sec. 7.

8. Any person may mark in the ear, or brand his sheep, as he may think proper, and cause a description of such mark or brand to be recorded by the town-clerk of the town in which he resides, or in which his sheep may be kept, and the town-clerk shall be entitled to receive six cents for recording the same. *R. S.*, ch. 128, sec. 1.

9. If any other person shall wilfully alter, cut out or deface the mark or brand of any such sheep, or if any person, under pretence of marking the same, shall cut off the ear or ears of any sheep, he shall forfeit five dollars for every such offence, to the use of any person who will sue for the same. *Ibid.*, sec. 2.

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## CHAPTER 69.

### SPECIAL DUTIES OF TOWN-CLERKS.

- |                                 |                                |
|---------------------------------|--------------------------------|
| 1. Personal mortgages recorded. | 5. Births and deaths recorded. |
| 2. Contracts, when recorded.    | 6. Marriages published, &c.    |
| 3. Attachments filed.           | 7. Fees of town-clerks.        |
| 4. Transfers of shares.         | 8. Form of record or copy.     |

1. Every town-clerk shall keep a book of records for

personal mortgages, at the expense of the town ; shall record therein any mortgage, transfer, consent or discharge, or give a certified copy thereof, when requested, upon payment of the fees therefor ; shall certify the time when the same is received and recorded, and keep an alphabetical index of mortgagers and mortgagees, which records and index shall be open to public inspection. *R. S., ch. 132, sec. 12.*

The mortgage and the oath upon it should be recorded at length, and attested under the record, thus—

*A true copy. Attest : R. M., Town-Clerk.*

A certificate of the recording should be made on the back of the mortgage, the form of which may be :

*N* , *May 21, 1843.* Received this day, at ten o'clock in the forenoon, and recorded in the records of said town, by me.

*R. M., Town-Clerk.*

2. The town-clerk shall receive, whenever delivered, every copy of a contract for building or repairing any building or vessel, in any town in which the chapter relating to "the liens of mechanics and others" is in force ; shall minute thereon the time when received, and keep the same on file, for which he shall receive seventeen cents. *R. S., ch. 133, sec. 5.* The contract need not be recorded, but kept on file only, and the "minute" made thereon may be—*May 23, 1843 : Received this day, and filed. R. M., Town-Clerk.*

3. Attachments of real estate, and of personal property in certain cases, are made by leaving with the town-clerk a copy of the writ. The town-clerk should make a minute on such copy of the time when received, and file the copy away safely, as in the preceding section.

4. Every corporation hereafter created, (after Dec. 23, 1843,) within five days from the time when it shall be organized for business, shall cause to be delivered to the town-clerk of the town in which the company has its principal place of business, or left at his dwelling-house, a list of the names and places of residence of all its stockholders, the number of shares owned by each, and the amount of capital actually paid in, in cash, by each stockholder, certified under oath by the cashier, clerk or one of the directors of the company to be a full and correct list thereof.

From and after the time in which such list is required to

be so left, no sale, transfer or assignment by any stockholder of his stock, shares or interest in the capital of such company, shall be good and effectual for the purpose of exonerating him from his personal responsibility for the debts and liabilities of such company afterwards contracted or incurred, unless the same be in writing, and recorded in the office of the town-clerk of the town in which such principal place of business is located.

It shall be the duty of every such town-clerk to record and keep on file all such lists, and to record all deeds and instruments of sale, transfer and assignment of such stock, shares or interest, which may come to his hands for that purpose; for which service he shall be entitled to receive from the person or corporation requiring the service to be performed the same fees allowed by law for recording mortgages of personal property. *R. S., ch. 146, secs. 6, 7, 8, 9.*

The duties of the town-clerk in this case are similar to his duties in the case of personal mortgages. He should record the transfer and attest it, stating the time when received, and keep the original on file. It would be convenient also to keep an index of the persons by and to whom shares are transferred.

5. The clerk of every town shall record every birth and death in such town which shall come to his knowledge, stating the time when such event took place, and the names of the parents, if known; and shall receive therefor three cents, to be paid by such town. Every parent, person next of kin, house-holder, and keeper of any alms-house, poor farm or prison, shall give notice to such clerk of every birth or death which shall take place in their respective families or house in such town.

If any such person, whose duty it is to make such return, shall neglect so to do for the space of one year, he shall forfeit one dollar for each offence, to be recovered by action of debt in the name and to the use of such town, and the selectmen shall prosecute the same. *R. S., ch. 126, secs. 1, 2, 3.*

6. All persons residing in this state proposing to be joined in marriage shall have their intention published on three public meeting days in the respective towns where the parties dwell, by the clerks of such towns. If either party lives in a town where there is no clerk, such publishment shall be made in some town next adjoining. *R. S., ch. 147, sec. 4.* The town-clerk shall give a certificate of such publishment to

the party applying, the fee for which is fifty cents. *Ib.*, sec. 5.

The form of such certificate may be :

This certifies that on three public meeting days in the town of C., in the county of H., I published the intention of L. P., of M., in the county of G., in this state, and E. W., of said C., to be joined in marriage.

C , May 1, 1843. R. M., *Town-Clerk of C.*

Every person who solemnizes any marriage is required to make and keep a record thereof, and to "return a copy of such record to the town-clerk of the town in which he lives, in the month of March, in each year, a copy of such record, containing the christian and surname of all persons who have been joined in marriage by or before him since his last return, the place of abode of each, and the date of such marriage." *R. S.*, ch. 147, sec. 9. "Every town-clerk shall record, in the book of records of such town, every certificate of marriage returned to him as aforesaid, and shall receive from the town six cents for each marriage so recorded, as a fee for recording the same." *Ibid.*, sec. 10. The penalty for any neglect is five dollars. *Ibid.*, sec. 11.

7. For the fees of town-clerks, see page 32.

The town-clerk shall make out a statement of the items of his fees, and receipt it on demand. If he refuses to give such statement he forfeits twenty dollars, to the use of the town; and if he takes illegal fees he forfeits fifty dollars, to the use of the county. *R. S.*, ch. 229, secs. 3, 17, 18, 27.

If the town-clerk makes any false record or copy of a record he is liable to be punished by confinement in the state prison. *R. S.*, ch. 217, sec. 18.

8. If the town-clerk (or any clerk,) is recording the proceedings of any meeting, he should write it out in full, stating all the motions and votes, and *always* sign his name at the bottom, thus : *Attest : R. M., Town-Clerk.* A record which is not signed by the clerk is not evidence.

The proper mode of recording a paper is to copy the paper in full, including all names and dates, and if there is a seal upon it make a mark for it in the corresponding place in the record, thus : (*L. S.*) At the end he should add in all cases—*A true copy. Attest : R. M., Town-Clerk.*

If he wishes to make a copy of a record, he should copy the paper in full, and also the words, "a true copy. *Attest : R. M., Town-Clerk,*" and add at the bottom of all,

*A true copy of record. Attest : R. M., Town-Clerk.*

# APPENDIX.

---

## I.

### FORM OF RECORDS OF TOWN MEETING.

The town-clerk should first record the warrant for the meeting, and the return of posting up at length, making a scroll or mark, with the letters, (L. S.) for the place of the seal, and put his attestation at the bottom: *A true copy : Attest : R. M., Town-Clerk.*

He should then record the proceedings of the meeting, the general form of which may be :

At a legal town meeting, duly notified and holden at N., in the county of H., on Tuesday, the fourteenth day of March, in the year eighteen hundred forty-three, the legal voters of said town, by major vote and by ballot,

Chose C. G. A. moderator to preside in said meeting, who being present took the oath of office by law prescribed.

Chose R. M. town-clerk, who being present took the oath of office by law prescribed.

Chose A. M., T. P. and F. S. selectmen of said town, who being present severally took the oath of office by law prescribed.

Chose L. C. B., H. J. and D. P. superintending school committee of the town, &c. (Here insert all the town officers who are chosen by ballot.)

The following votes of the inhabitants of said town qualified to vote for senators, were given in for governor, for counsellor and for senator, for register of deeds, county treasurer and three road commissioners, and were received in presence of the selectmen of said town, in open meeting, by the moderator thereof, who in said meeting, in presence of said selectmen and of the town-clerk of said town, sorted and counted said votes, and at the close of the poll made a public declaration of the whole number of the tickets given in, the name of every person voted for, and the number of votes for each person, which was as follows :

#### *For Governor.*

For A. B., one hundred and ten votes.

For C. D., ninety-six votes.

For E. F., ten votes.

#### *For Counsellor.*

For G. H., one hundred votes.

For I. J., ninety-eight votes.

For K. L., two votes.



*For Senator.*

For M. N., one hundred and five votes.

For O. P., one hundred and one votes.

*For Register of Deeds.*

E. B. had one hundred votes.

J. L. had fifty votes.

A. W. had one hundred votes.

*For County Treasurer.*

N. P. had one hundred votes.

D. S. had one hundred votes.

*For Road Commissioners.*

A. B. had one hundred and five votes.

C. D. had one hundred and two votes.

E. F. had one hundred and ten votes.

G. H. had ninety-eight votes.

I. J. had ninety-nine votes.

K. L. had one hundred and one votes.

M. N. had six votes.

The whole number of tickets given in at said meeting for said officers respectively was as follows: for governor, two hundred and sixteen; for counsellor, two hundred; for senator, two hundred and six; for register of deeds, two hundred and fifty; for county treasurer, two hundred, and for road commissioners two hundred and twelve.

The alphabetical list of all the inhabitants of said town, qualified to vote for senator, having been lodged with the clerk of said town, and posted up at the town-house in said town, fifteen days prior to said fourteenth day of March, and the name of each voter having been checked by the town-clerk on said list during the balloting, the votes of the inhabitants of said town qualified as aforesaid, given in for a representative to represent said town in the general court of said state, were received in the presence of the selectmen, in open town-meeting, by the moderator thereof, who in presence of said selectmen and of the clerk of said town, sorted and counted the same, and at the close of the poll made a public declaration of the whole number of tickets given in, the name of every person voted for, and the number of votes for each person, which was as follows:

A. B. had one hundred and ten votes.

C. D. had one hundred votes.

E. F. had three votes.

L. T. had one vote.

The whole number of tickets given in was two hundred and fourteen.

And the said A. B. having a majority of all the tickets given in, was declared by the moderator to be elected representative for the ensuing year.

The following votes of the inhabitants of said town, present and qualified to vote for representatives to the state legislature, were given in by ballot for four persons to represent this state in the Congress of the United States for the term of two years from and after the third day of the said month of March, and were received in presence of the selectmen of said town, in open meeting, by the moderator thereof,

who, in said meeting, in presence of said selectmen and the clerk of said town, sorted and counted said votes, and at the close of the poll made a public declaration of the whole number of tickets given in, the name of every person voted for, and the number of votes for each person, which was as follows :

For A. B., one hundred votes.

For C. D., one hundred votes.

For E. F., one hundred and two votes.

For G. H., ninety-eight votes.

For I. J., ninety votes.

For K. L., ninety-two votes.

For M. N., eighty-eight votes.

For O. P. eighty-nine votes.

For R. S., eight votes.

For T. U., five votes.

The whole number of tickets given in for representatives to congress at said meeting, was two hundred and five.

And the inhabitants of said town, legal voters therein, present at said meeting, by major vote,

Chose T. M. collector of taxes, who being present took the oath of office by law prescribed.

Chose A. B., C. D., (here insert all the other town officers.)

*Voted*, to raise the sum of four hundred dollars, for the repair of highways and bridges the ensuing year.

*Voted*, to raise the sum of five hundred dollars to defray the necessary charges and expenses of the town for the ensuing year.

(Here insert all the votes of the meeting.)

A true record : Attest : R. M., *Town-Clerk*.

It will be observed that this record is the same as the returns of votes on pages 56, 58, 60, 61 and 66. The return should always be a copy of the record, attested by the town-clerk as in those forms.

If there should be no choice of a representative to the general court at the first balloting, the form of the return should be altered, by inserting at the end of the list of votes for that office the following words—And no person having a majority of all the tickets given in, it was declared by the moderator that there was no choice :

Whereupon the inhabitants, qualified as aforesaid, proceeded to a second balloting, and the name of each voter having been checked by the town-clerk on said list during the balloting, the votes, &c. (Here insert the whole of the remainder of the form just given.)

If the meeting is adjourned, and the election takes place on the next day, the form of the record may be found on pages 68, 69.

Town-clerks should observe that some changes have been made in the law recently, so that the old forms are not correct. A little care will enable them, however, to make a correct record or return. Much carelessness has prevailed in this respect, and great hazard and inconvenience have often resulted from it. A few years since more than half of all the returns of votes made to the secretary of state were incorrect in some respect. Town-clerks may now be required to attend at Concord *at their own expense*, and correct all errors in their records and returns, and this authority is often put in force. Such an exposure is not only mortifying to the officer, but often exposes him to the charge of unfitness or dishonesty, all which may be prevented by a little care and reflection.

## II.

## THE INVOICE AND TAX LIST.

The taking of the invoice and the assessment of taxes are among the most laborious and difficult duties of selectmen. It is, however, a simple matter after the invoice book is ready for use. Printed blanks may now be readily procured at a small expense, which will save much trouble in ruling and writing; if printed blanks are not used, the following form may be adopted. (See page 336.)

Chapter 17 shows *what* property is to be taxed, and no kind of property not contained in that chapter is to be set down in the invoice. In chapter 18 may be found the town in which, and the person to whom property is to be taxed, and in chapters 20 and 21 the mode of taxation.

After the invoice is completed, the first step is to add up and carry out the total value of the taxable property of every person whose name is found in the invoice. This is to be set down in the column headed *Total Value*, against his name. In the assessment of taxes all property, real and personal, is to be valued at one half of one per cent. of its appraised value, as set down in the invoice, and polls at one dollar and fifty cents each, (which is equivalent to three hundred dollars of taxable property.) This half of one per cent., with the addition of one dollar fifty cents for the poll whenever taxed, is called the *Reduced Value*, and is to be made out and set down in the column headed *Reduced Value*, against every man's name. This should be done with great care, and the whole amount in that column added up and ascertained.

As an illustration, take the name of Gideon Patch, in the form given. He is taxed for 1 poll; land, \$4,000; buildings, \$600; stock in trade, \$100; carriages, \$50; 1 horse, \$50; 6 cattle, \$150.00, and 10 sheep, \$20. The total value of the property as set down in the invoice is \$4,970. One half of one per cent. on this sum is 24.85, to which add \$1.50 for his poll, and the *reduced value* of his poll and estate is \$26.35. This is the sum upon which his taxes are to be assessed.

The next step is to ascertain the amount of the sum to be assessed in one assessment. "The selectmen may include in one assessment the state, county, town and school taxes, or so many of them as may be found convenient." See page 85. This amount should be compared with the total amount of the reduced value as just ascertained, and the object is to find how much on a dollar is to be assessed on the reduced value. This is to be done by the rule of three, and the sum will be: as the amount of the reduced value is to the amount of the tax to be assessed, so is one dollar to the answer, or proportion.

As an explanation of the rule we will suppose that the amount of the reduced value of taxable property, including polls, in a town, is \$2500.00, and that the tax to be assessed is \$2000.00. The proportion in such case would be eighty cents on the dollar of the reduced

value, and the poll tax would be one dollar twenty cents. The answer is found thus :

Tax table : 80 cents on \$1.00.

2.500 : 2.000 :: 1.00  
1.00

2500 ) 200000 ( 80  
20000  
00

	\$ 100	\$ 10.00	\$ 1.00	cents. .10	cents. .01
1	80	8.00	.80	8	.8
2	160	16.00	1.60	16	1.6
3	240	24.00	2.40	24	2.4
4	320	32.00	3.20	32	3.2
5	400	40.00	4.00	40	4.0
6	480	48.00	4.80	48	4.8
7	560	56.00	5.60	56	5.6
8	640	64.00	6.40	64	6.4
9	720	72.00	7.20	72	7.2

After this proportion is found, it is convenient to make a scale, or tax table; the above form, (which is made upon the foregoing proportion of eighty cents on the dollar,) is probably more convenient in practice than any other. The top line contains cents; tens of cents, dollars, &c. The left hand line of figures, 1, 2, 3, &c., shows the number of cents, tens of cents, dollars, &c. Thus the right hand column contains the proportion on sums from one to nine cents; the second column the proportion on sums from ten to ninety cents; the third, fourth and fifth columns severally the proportion on sums from one to nine dollars, from ten to ninety dollars, and from one hundred to nine hundred dollars of the reduced value. The tax on 1 cent is 8 mills, on 2 cents is 1 cent six mills, &c. The tax on 10 cents is 8 cents, on 20 cents is 16 cents, &c. In this mode the table is made.

As an illustration : suppose the reduced value of the property and poll of Gideon Patch, (see Invoice,) is \$26.35, and you wish to find his tax on the above proportion. You look first for \$20.00, and find it under the head of \$10.00, and opposite figure 2, in the left hand column, (or twice ten,) and the tax on \$20.00 is \$16.00. The tax on \$6.00 is found under the head \$1.00, and opposite figure 6, (or six times one dollar) and the tax on it is \$4.80. The tax on 30 cents is 24 cents, and on 5 cents is 4 cents. Add these together, and the tax on \$26.35 is \$21.08.

Or take another example. Suppose the total reduced value of polls and estate is \$3.540.00, and the town tax is \$1.800.00; the highway tax \$400.00; the county tax \$100.00; the state tax \$360.00, and the school tax \$600.00. If these sums are to be assessed separately the proportion or scale on the dollar would be, for town tax, 50 cents 8 mills; for highway tax 11 cents 3 mills; for county tax 2 cents 8 mills; for school tax 17 cents, and for state tax 10 cents 1 mill; or in all 92 cents on the dollar. In practice the mills are not generally used. Selectmen are authorized to assess 5 per cent. extra, and the proportions used in the above case would probably be 51 cents, 11 cents, 3 cents, 17 cents and 10 cents, or perhaps more.



THE INVOICE OF THE POLLS AND RATEABLE ESTATE OF RESIDENTS IN THE TOWN OF D., APRIL 1, 1843

[illegible]

The foregoing is an invoice of all the polls and rateable estate of the inhabitants of the town of D., in the county of H., and state of New-Hampshire, taken April 1, 1843.

C. G. A.) *Selectmen*

C. G. A. } *Selectmen*  
J. M. H. } *of*  
P. M. } D-\_\_\_\_.

If assessors are chosen they should unite with the selectmen in making the invoice, and sign it as assessors, in a form similar to that of the selectmen. See page 27.

The general form of the invoice is prescribed by statute; (*see page 42*;) and the laws and directions for making it may be found, pages 81 to 84. It has been found convenient in the larger towns to take it by school districts, as it facilitates the assessment of school and school-house taxes.

The invoice of non-residents may be made in a similar form, omitting the column of polls, and such others as are not necessary. The heading may be—*The Invoice of the Rateable Estate of Non-Residents in the town of D., April 1, 1843*; in the certificate at the bottom omit the words, "polls and rateable estate of the inhabitants of"—and insert instead—*Rateable Estate of Non-Residents in.*



### III.

Since the first part of this book was printed, the last number of the New-Hampshire Reports, volume 9, has appeared, containing some decisions relating to town officers.

#### COLLECTORS OF TAXES.

If a collector of taxes has not taken the oath of office, he has not sufficient authority to act, notwithstanding he may have been duly elected ; and he is not in such cases protected by the statute of June 16, 1836, which provides that where collectors have taken the oath of office and given bond, they shall not be liable, except for their own wrong or illegal conduct.

There are cases in which it may be submitted to a jury, to presume, from a defective record of the election of a town officer, and from his having acted under the appointment, that the meeting was duly held, the proceedings of the town regular, and the officer duly sworn ; but this cannot be done where the proceedings are recent, and no cause is shown why the defective record cannot be amended, if the truth will warrant it.

Where an inhabitant of a town is liable to taxation, and is duly assessed his proportion of the public taxes, which are collected by a collector de facto, he is not entitled to recover back the amount of the taxes, or the value of the property which may have been taken to pay them, merely because the collector did not take the oath of office. He is entitled to damages commensurate with the injury he has sustained ; and if he has in fact sustained no injury except in the collection of what was due from him by one who was an officer de facto, but not de jure, he can recover nominal damages only. But unless the tax has been legally granted, a collector de facto must in such case be answerable for the value of the property taken.

If a collector seizes and attempts to sell property at auction, in satisfaction of a tax, and the sale fails because the bidder refuses to receive a delivery, and complete the purchase, the collector may again seize and sell the property. 9 *N. H. R.*, 524.

#### PAUPERS.

In order to gain a settlement under the eighth mode prescribed in the statute of January 1, 1796, the party must have been taxed for his poll seven years in succession. 9 *N. H. R.*, 573.

#### TOWN-CLERK.

A copy of the record of the marriage, from the town-clerk's office, duly certified, with proof of the identity of the party, is competent evidence. 9 *N. H. R.*, 515.

#### CONSTRUCTION OF STATUTES.

The definitions of a few words used in the Revised Statutes are also given, which are to be applied to the words when found in the statutes, but not when found elsewhere.

When any person is conscientiously scrupulous about swearing, an affirmation may be substituted for an oath. Holding up the right hand is omitted. *R. S., ch. 15, sec. 4, 5, 6.*

The form of the affirmation administered to town officers, may be :

You solemnly affirm that you will well, faithfully and impartially discharge and perform all the duties incumbent on you as a , according to the best of your abilities, agreeably to the rules and regulations of the constitution and laws of the state of New-Hampshire.

*This you do under the pains and penalties of perjury.*

Every word importing either the *singular* or *plural* number, may extend and be applied to one, or more than one person or thing. *R. S., ch. 1, sec. 1.*

Every word importing the *masculine* gender, may extend and be applied to females. *Ibid., sec. 2.*

The word *town* may be construed to extend and be applied to any place incorporated, or the inhabitants of which are required to pay any tax, and may mean that town in which the subject matter is situate, or in which the persons referred to are resident. *Ibid., sec. 4.*

The word *inhabitant* may be construed to mean a resident or person dwelling and having his home. *Ibid., sec. 5.*

The words *annual meeting*, when applied to towns, may be construed to mean the annual meeting required by law to be holden in the month of March. *Ibid., sec. 6.*

The words *month* and *year* shall be construed to mean a calendar month or year, unless otherwise expressed ; and the word *year* shall be equivalent to the expression, "Year of our Lord." *Ibid., sec. 7.*

The word *person* may extend and be applied to bodies politic and corporate, as well as to individuals. *Ibid., sec. 8.*

To words *land, lands* or *real estate* shall be construed to include lands, tenements and hereditaments, and all rights thereto and interests therein. *Ibid., sec. 17.*

The words *written*, or, *in writing*, may include printing, excepting when the written signature of a person is required. *Ibid., sec. 19.*

When any court, officer or board is named by their official title, such designation shall be construed to apply to the court, officer or board of the county, town or district within and for which they are qualified to act in such capacity. *Ibid., sec. 24.*

When time is to be reckoned from any day, date, act done or the time of any act done, either by force of law or by virtue of any contract hereafter made, such day, date, or the day when such act is done, shall not be included in such computation. *Ibid., sec. 25.*

# INDEX.

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As a table of contents is inserted, it was thought that a minute index was unnecessary. The references are made sometimes to the beginning of a chapter, in which case the abstract will direct to the proper sections, and sometimes from one page to another, between which there may be found numerous provisions on the subject.

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